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ROYAL COMMISSION OF INQUIRY INTO CERTAIN  
DEATHS AT THE HOSPITAL FOR SICK CHILDREN AND  
RELATED MATTERS.

Hearing held  
8th floor  
180 Dundas Street West  
Toronto, Ontario

The Honourable Mr. Justice S.G.M. Grange

P.S.A. Lamek, Q.C.

E.A. Cronk

Thomas Millar

Commissioner

Counsel

Associate Counsel

Administrator

Transcript of evidence  
for

September 28, 1983

VOLUME 41

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595-1065

Mancer (cont'd)

X: Brown  
Foster

Hunt

Percival

Sydney

Olak

Roland

Tobias

Carver (cont'd)

X: Shumiloff

R. 2x Roland

PHAL







ROYAL COMMISSION OF INQUIRY INTO CERTAIN  
DEATHS AT THE HOSPITAL FOR SICK CHILDREN  
AND RELATED MATTERS.

Hearing held on the 8th Floor,  
180 Dundas Street West, Toronto,  
Ontario, on Wednesday, the 28th  
day of September, 1983.

- - - -

THE HONOURABLE MR. JUSTICE S.G.M. GRANGE - Commissioner  
THOMAS MILLAR - Administrator  
MURRAY R. ELLIOT - Registrar

APPEARANCES:

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M. THOMSON )	
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	Children
B. SYMES )	Counsel for the Registered
M. O'CONNOR )	Nurses' Association of Ontario
	and 35 Registered Nurses at
	The Hospital for Sick Children

(Cont'd)



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APPEARANCES:

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E. FORSTER	Counsel for Phyllis Trayner - Nurse
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S. LABOW	Counsel for Mr. & Mrs. Gosselin, Mr. & Mrs. Gionas, Mr. & Mrs. Inwood, Mr. & Mrs. Turner, Mr. & Mrs. Lutes and Mr. & Mrs. Murphy (parents of deceased children)
W.W. TOBIAS ) G.R. SOLOMON )	Counsel for Mr. & Mrs. Hines, (parents of deceased child, Jordan Hines)
F.J. SHANAHAN	Counsel for Mr. & Mrs. Dominic Lombardo (parents of deceased child Stephanie Lombardo); and Heather Dawson (mother of deceased child Amber Dawson)
J. SHINEHOFT	Counsel for Lorie Pacsai and Kevin Garnet (parents of deceased child, Kevin Pacsai).

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VOLUME 41

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INDEX OF WITNESSES

<u>Name</u>	<u>Page No.</u>
<u>CARVER</u> , David (Recalled) (Previously Sworn)	8171
<u>MANCER</u> , James Frederick Kent (Resumed)	8174
Cross-Examination by Mr. Brown	8174
Cross-Examination by Ms. Forster	8180
<u>CARVER</u> , David (Resumed)	8190
Cross-Examination by Mr. Shinehoft	8190
Further Examination by Mr. Roland	8199
Further Examination by Mr. Lamek	8205
<u>MANCER</u> , James Frederick Kent (Resumed)	8216
Cross-Examination by Mr. Hunt	8216
Cross-Examination by Mr. Percival	8255
Cross-Examination by Ms. Symes	8298
Cross-Examination by Mr. Olah	8345
Cross-Examination by Mr. Roland	8364
Cross-Examination by Mr. Tobias	8366

INDEX OF EXHIBITS

<u>No.</u>	<u>Description</u>	<u>Page No.</u>
198	List of Children Autopsy Date - Cause of Death - (substitute copy).	8298







1 ---On commencing at 10:00 a.m.

2 THE COMMISSIONER: Now, yes, Mr.  
3 Lamek.

4 MR. LAMEK: Mr. Commissioner, we  
5 have Dr. Carver back this morning. His cross-  
6 examination as you will recall was completed except  
7 I believe for counsel for the parents. It seemed to  
8 me it might be sensible, with Dr. Mancer's blessing,  
9 to interrupt Dr. Mancer's cross-examination and complete  
10 Dr. Carver and let him go on his way.

11 THE COMMISSIONER: Yes, all right.

12 MR. LAMEK: Can we have Dr. Carver,  
13 please.

14 DR. DAVID CARVER, Recalled (Previously Sworn)

15 THE COMMISSIONER: Mr. Labow?

16 MR. LABOW: Mr. Commissioner, I have  
17 no questions of Dr. Carver but I should like to  
18 indicate that it is my understanding that Mr. Shinehoft  
19 definitely had questions the last time I spoke to him  
20 and I thought Mr. Shanahan had questions but we  
21 weren't expecting to see the Doctor until later today.  
22 But I have no questions.

23 THE COMMISSIONER: You have no  
24 questions, well, that solves that one.

25 MR. SOLOMON: I can tell you, Mr.  
Commissioner, on behalf of Mr. Tobias there are no  
questions as well.

THE COMMISSIONER: That bus from

A  
BB/cr







1 Hamilton doesn't get in until a quarter past 10.

2 MR. LAMEK: He may be jogging from  
3 Hamilton or something.

4 THE COMMISSIONER: Yes.

5 MR. LAMEK: The fault may be mine,  
6 Mr. Commissioner, for not having made it clear that  
7 we would start with Dr. Carver this morning. Perhaps  
8 in fairness to Mr. Shinehoft and Mr. Shanahan we could  
9 ask Dr. Carver to step down for a little while.

10 THE COMMISSIONER: I wonder if someone  
11 would telephone Mr. Shanahan. I know why Mr.  
12 Shinehoft is late but I don't know why Mr. Shanahan,  
13 if he wants to - could somebody call him, Mr. Labow,  
14 could you do that?

15 MR. LABOW: I will call him right  
16 now.

17 THE COMMISSIONER: I don't know, you  
18 are not due for some time in the other examination.  
19 We haven't arranged our affairs too well, Dr. Carver,  
20 could you stand down for just a few minutes. As  
21 soon as the other counsel are here we will proceed.

22 THE WITNESS: Sure.

23 MR. LAMEK: I'm sorry, Dr. Carver, I  
24 tried. We will let you in at the first appropriate  
25 break.

THE WITNESS: Thank you.

---Witness withdraws.

THE COMMISSIONER: All right. Well





1  
2 then, I guess it is Dr. Mancer.

3 MR. LAMEK: Dr. Mancer, please.

4 THE COMMISSIONER: Yes.

5 MR. LAMEK: Oh, he is outside.

6 THE COMMISSIONER: While we are  
7 waiting, what's the word from Mr. Sopinka?

8 MR. BROWN: I haven't been able to  
9 see Mr. Sopinka.

10 THE COMMISSIONER: I wonder, it would  
11 be a nice idea if you would tell Mr. Sopinka to call  
12 Mr. Percival and sort this matter out and let us  
13 know so we don't have to ---

14 MR. BROWN: Certainly. Mr.  
15 Commissioner, I hate to use the word tentatively  
16 but next Tuesday was suggested and I'm operating under  
17 that assumption.

18 THE COMMISSIONER: It is a dangerous  
19 assumption. What about Mr. Percival?

20 MR. YOUNG: We suggested next  
21 Tuesday.

22 THE COMMISSIONER: Oh, you suggested  
23 it, oh, I see.

24 MR. BROWN: I will endeavour by this  
25 afternoon to have that confirmed.

THE COMMISSIONER: Yes, all right,







1  
2 that's fine then, thank you. But if it isn't  
3 satisfactory don't come back to me with Tuesday is  
4 no good, just ask Mr. Sopinka to call - they may not  
5 be speaking after the motion but before the motion  
6 they will be speaking to each other, so, you can ask  
7 them to get together and sort it out. All right.

8 MR. BROWN: Certainly.

9 MR. LAMEK: Mr. Commissioner, the  
10 customary clockwork precision will resume in one  
11 moment when Dr. Mancer will be here. He is washing  
12 his glasses.

13 THE COMMISSIONER: Oh, good.

14 JAMES FREDERICK KENT MANCER, Resumed

15 THE COMMISSIONER: Yes, Mr. Brown.

16 CROSS-EXAMINATION BY MR. BROWN:

17 MR. BROWN: Thank you.

18 Q. Dr. Mancer, there are two  
19 areas in which I would briefly like to delve. The  
20 first involves the solutions which you use in the  
21 Pathology Department at the Hospital for Sick  
22 Children to suspend or preserve tissue samples which  
23 you take on autopsy. We heard yesterday from Dr.  
24 Becker that a solution which is commonly used is  
25 called the Klotz solution. Is that a solution with  
which you are familiar?







1

2

A. I know about it but I don't  
know the components of it.

3

4

Q. You do not know the components  
of it?

5

6

A. No, I don't.

7

8

Q. Okay, fine. I understand there  
is a second solution which is sometimes used called  
the Ely medium. Are you familiar with that solution?

9

10

A. Would you say that again,  
please.

11

12

13

Q. A solution called the Ely -  
perhaps I am mispronouncing it - E-l-y medium in  
which some tissues are preserved. Are you familiar  
with that solution?

14

15

A. No, I'm not.

16

17

18

19

20

21

22

Q. Very well. The second area  
in which I desired your assistance was to try and  
determine what happens to a tissue sample after you  
remove it from the body and my understanding is  
during the course of the autopsy you will in some  
cases remove an entire organ or remove part of an  
organ so that tissue specimens may be examined at  
a later date. When you remove the organ from the  
body where is it placed?

23

24

25

A. Well, it is usually dissected





1  
2 first fresh, but in some cases heart and lungs would  
3 be put into Klotz solution, that is, in some cases  
4 of congenital heart disease.

5 Q. They would be placed immediately  
6 into the Klotz solution?

7 A. Yes, before dissection.

8 Q. And those tissues that are  
9 dissected, the dissected tissue or the specimen, where  
10 is that placed?

11 A. Well, when it is finished with  
12 usually a sample would be taken from it during the  
13 section and put in formolin for preparation of  
14 microscopic sections. Sometimes during dissection  
15 or even before the dissection starts we may take  
16 bacteriological samples and send them to the  
17 Bacteriology Department. This may be tissue or a  
18 swab and send it to the Microbiology Department for  
19 culture.

20 Q. So, those samples which are  
21 sent to the Bacteriological Department are sent  
22 directly, they're not put into any solution in the  
23 Pathology Department, is that correct?

24 A. They're not. If a specimen  
25 is sent for virology it is put into a medium.

Q. And the tissues which are







1  
2 later to be examined I believe in the Histology  
3 Department, are they maintained in a solution in  
4 the Pathology Department for a period of time before  
5 they are sent to Histology?

6 A. Well, the Histology Department  
7 is part of Pathology Department of the Hospital.  
8 They are maintained in formolin for a period of  
9 time, a day or more for fixation and then they are  
10 processed.

11 Q. I am sorry, could you describe  
12 how they are processed?

13 A. Well, this is done by the  
14 technologists. They are put through a process whereby  
15 they are gradually dehydrated and the water is  
16 gradually all removed and replaced by alcohol and  
17 then the alcohol is gradually removed and replaced  
18 by xylol by parafin. It is a matter that you can't  
19 go straight from alcohol to parafin you have to have -  
20 I'm sorry, water or formolin to parafin, you have to  
21 have alcohol first and then xylol and then parafin  
22 because of the solubilities of each in the other.

23 Q. And at the end of this process  
24 are the samples then ready to be examined under  
25 microscope?

A. No, they have to be sliced from





1  
2 the parafin block and then stained and then mounted  
3 on a slide and then they are examined.

4 Q. Now, the remaining part of  
5 this sample which you referred to as the parafin  
6 block, what is done by that. Is that maintained?

7 A. It is filed, yes.

8 Q. And is it preserved in some  
9 solution?

10 A. No. Since it is a parafin  
11 block it will remain like that for an indefinite  
12 period.

13 Q. If during autopsy you take  
14 from the body a fairly, let us say the entire organ  
15 and only a portion of that is dissected for microscopic  
16 analysis. What is done with the remaining portion of  
17 the organ?

18 A. It is returned to the body  
19 and it will be buried with the body.

20 Q. Are there ever any cases in  
21 which you have taken tissue from the body, you have  
22 prepared it in a manner which you detail for examination  
23 under a microscope and then a specimen or a portion of  
24 the tissue remains and is preserved in a solution?

25 A. There would be cases like  
that, yes.







1

2

Q. And what sort of cases would those be?

3

4

A. Well, it depends on the nature of the case. If the pathologist thought he had to possibly go back to the specimen later to examine it again, we might preserve the whole organ.

5

6

7

8

9

10

Q. And in that case where he thinks that there might be a need for future analysis of the tissue, would the remaining portion of the organ again be preserved in a formolin solution?

11

12

A. It would usually be in formolin unless it was in Klotz to begin with.

13

14

15

Q. And I take it it is kept in some sort of a sealed container?

16

17

18

Q. Are there special storage facilities for these containers, in terms of a cool room or are they kept at room temperature?

19

20

A. Room temperature.

21

MR. BROWN: Okay, those are all the questions I have.

22

23

24

25

THE COMMISSIONER: Yes, all right.  
Miss Forster.





CROSS-EXAMINATION BY MS. FORSTER:

Q. Doctor, you were mentioning to Mr. Scott yesterday that a contaminated sample might be contaminated in a way that would either produce an unrealistically high reading or an unrealistically low reading, do you recall that?

A. Yes.

Q. And you gave us examples of the kinds of contamination that would result in an unrealistically low reading and, as I recall, you gave us one example of the contamination that could result in an unrealistically high reading and that was fecal contamination. Do you recall that?

A. Yes.

Q. Are there any other ways in which a sample could be contaminated such as to produce an unrealistically high reading?

A. Yes. We didn't get to that yesterday I was stopped at the first possibility. Yes, if there is leakage from a cut organ or a bare organ that has been dissected that would have an unusually large amount of digoxin in it, and this would include muscle, and it is my understanding that muscle, all muscle in the body has a much higher content of digoxin in the blood.







1  
2 Q. All right. Are there any  
3 other examples that you can think of, Doctor, where  
4 the contamination would be such as to give an  
5 unrealistically high reading?

6 A. Well, the bowel contents and  
7 the muscle would be examples that come to mind. I'm  
8 not aware of others.

9 Q. All right. Dr. Freedom told  
10 us when he was giving evidence that it is possible  
11 on autopsy to have a contaminated sample without  
12 the person conducting the autopsy being aware of the  
13 contamination. Is that something with which you  
14 agree?

15 A. Well, at the time these  
16 autopsies were done we weren't aware of all these  
17 possibilities. None of us were aware that there was  
18 an increase in muscle and also the increased amount  
19 in the intestine was something of which I wasn't  
20 aware until later even than I was aware about the  
21 muscle.

22 There is another couple of possibilities  
23 that I can think of as to how the digoxin gets into  
24 the intestines. It can get in there by of course  
25 ingesting the digoxin as oral therapeutic form or  
it can also be excreted from parts of the body and it





1  
2 is possible that the liver might be excreting it.  
3 So, one might have an increased amount in the liver.  
4 I don't really know.

5 THE COMMISSIONER: I am sorry, is this  
6 into the intestine or is this into the blood?

7 THE WITNESS: I'm talking about how  
8 it gets into the intestine. I really shouldn't be  
9 answering that sort of a question.

10 THE COMMISSIONER: No, no, we under-  
11 stand that.

12 THE WITNESS: Because I am not an  
13 expert in that area.

14 MS. FORSTER: Q. When you are  
15 talking about this excretion, Doctor, would that  
16 be something that happens during life or after life?

17 A. Oh, no, this excretion would  
18 be during life.

19 Q. And I'm sorry, Doctor, I  
20 don't believe I have really got an answer to my  
21 previous question. Is it possible at the time that  
22 you were doing the Estrella autopsy and other  
23 autopsies involving the babies we are dealing with  
24 here, that a sample could be contaminated without  
25 the person doing the autopsy being aware that a  
contamination did occur?







1

2

A. Yes.

3

4

Q. Okay. Doctor, I'd like to  
take you to the Estrella autopsy report. Do you  
have the Estrella medical records?

5

6

A. No, I don't.

7

8

Q. Doctor, if you could turn to  
page 12, which is the last page of the autopsy report.  
In the last paragraph, second sentence you say:

9

10

11

"These samples were contaminated  
slightly by edema fluid and ascidic  
fluid."

12

13

Can you tell me what you meant by the  
use of the word "slightly"?

14

15

16

A. Well, that was Dr. Taylor's  
interpretation of the degree of contamination. I  
would only be giving you an opinion about what he  
probably thought. So, it might be better to ask him.

17

18

19

Q. Well, as I understand it, you  
did discuss this last paragraph with Dr. Taylor, did  
you not?

20

21

A. Yes.

22

23

24

25

Q. Did you discuss with him his  
use of the word "slightly"?

A. I can't recall. We might  
have discussed it. It looked more like blood but





1

I can't recall specifically though.

2

3

Q. Is there Doctor a method  
of measuring the degree of contamination?

4

5

A. That would be - no precise  
method that I'm aware of.

6

7

Q. And are you aware whether the  
degree of contamination was measured in the Estrella  
case?

8

9

A. It wasn't.

10

11

Q. Lastly, Doctor, I would like  
to take you to two exhibits, 202A and B, which I  
understand were the protocol developed by you for  
a study to duplicate the method of taking the samples  
in the Estrella case, is that correct?

12

13

14

A. Yes, these were developed by  
me with input from Dr. Phillips and Mr. Cimbura

15

16

Q. I take it the first protocol  
that is developed was the protocol marked Exhibit  
202A, which is dated August 24, 1982, is that correct?

17

18

19

A. Yes.

20

Q. All right. First of all,  
Doctor, can you tell me why the study was conducted  
so long after the Estrella death?

21

22

A. Well, I anticipated being asked  
that question today and I didn't know the answer to it

23

24

25





Mancer, cr.ex.  
(Forster)

8185

1  
2 so, I asked Dr. Phillips why we did this study. He  
3 told me that it came as a result of his participation  
4 in the Risk Management Committee and through their  
5 discussions it was decided that such a study should  
6 be undertaken. This was done with knowledge and  
7 support and encouragement from the Chief Coroner  
8 and from Mr. Cimbura.  
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Q. Can you tell me over what period of time the study was conducted?

A. It was done from the period of late August until early 1983.

Q. After the protocol of August 1982 you amended your protocol and came up with Exhibit 202B. Is that correct?

A. Yes. It was amended between those two periods.

Q. Am I correct in assuming that the reason for the amendment was that you had decided that Exhibit 202A was not an exact reflection of the procedure on the Estrella case for taking the sample?

A. Not, it was not really that. It was just that it was decided that a few more samples might be appropriate and in particular part C of the second of the two protocols involves brain tissue.

Mr. Cimbura had become aware of a published report that samples from the brain were a very accurate measurement of digoxin, some recent report in the toxicology literature. So that was the main contribution but there were also some more details added to part 6 - A 6. Sample was





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taken from the iliac vein at the start of the autopsy and then some more detailed instructions about, information about, the patient's history and age and all that were also added, and information to make sure that Dr. Phillips got a copy of the report.

Q. Exhibit 202B then would include the taking of some samples that were not taken on the Estrella baby. Is that correct?

A. Oh, yes.

Q. Is it your evidence, sir, that Exhibit 202A, the protocol dated August, 1982 sets out the exact method by which the samples were taken from the Estrella baby?

A. Definitely not. This also includes samples that are taken at the start of the autopsy, so that we can compare them with the sample that was taken from the Estrella baby. The samples that were taken from the Estrella baby were only B, subheading 1 and 2, that is all.

Q. 1 and 2?

A. That is right.

Q. If I were to take a sample following the procedure on B1 and 2 I would have followed the procedure that was followed by Dr. Taylor











1

2

when he took the samples from Estrella?

3

A. That is correct.

4

THE COMMISSIONER: Sorry, you would  
not -

5

MS. FORSTER: I would have followed.

6

THE COMMISSIONER: You would have,  
yes, that is right.

8

MS. FORSTER: Q. Sir, are you able  
to tell me whether the study that was conducted in  
which you were trying to duplicate the Estrella  
sampling, and obviously do a bit more, was done  
firstly using the August protocol and then was a  
switch made to the second protocol?

10

11

12

13

14

15

16

17

A. Yes. I am not sure if any  
cases fell between the August 24th protocol and  
the second one. Actually, the way this is Xeroxed,  
the date does not appear on it, but it was a date  
in early September.

18

THE COMMISSIONER: I think  
September the 10th, was it not?

19

20

THE WITNESS: That would be about  
right.

21

22

23

24

25

MR. ROLAND: Mr. Commissioner,  
we have one in which a typed date appears at the  
top. It appears to have been Xeroxed off the one





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that was put in as an exhibit, and the date is  
September 7, 1982.

THE COMMISSIONER: All right.

MS. FORSTER: Q. Doctor, my copy  
of Exhibit 202B has handwriting on the top left-hand  
corner with the date September 10, 1982. Does your  
copy have that handwriting?

A. Yes, it does.

Q. Do you know whose handwriting  
that is?

A. It says from Dr. Mancer and  
I believe that says "A. Warr".

Q. I take it it is not your  
handwriting?

A. No.

Q. In any event, the second  
protocol would have gone into place somewhere around  
September 7th to 10th, somewhere around there?

A. Yes.

MS. FORSTER: Thank you very much,  
Doctor.

THE COMMISSIONER: Could we pause  
just a moment, Mr. Hunt. Mr. Labow, what did you  
find out about Mr. Shanahan?

MR. LABOW: Mr. Shanahan's office





1  
2 says that he is in court out of town and they do  
3 not expect him to be here this morning.

4 THE COMMISSIONER: All right. I  
5 think the sensible thing is to call Dr. Carver back,  
6 if that is all right with you. We will call Dr.  
7 Carver back and Mr. Shinehoft can have his  
8 re-examination, and at least one of the doctors can  
9 get back to work.

10 DAVID CARVER, (Resumed)

11 CROSS-EXAMINATION BY MR. SHINEHOFT:

12 Q. Doctor, I just have one or  
13 two questions to ask of you. When did you first  
14 become aware of the Pacsai dig. level reading?

15 A. As I mentioned in my previous  
16 testimony on Wednesday, March 18, Dr. Colin  
17 Costigan, the Chief Resident, came to me immediately  
18 after grand rounds and told me that the Pacsai  
19 child had died, I believe the preceding Thursday,  
20 and that he had obtained a digoxin level and this  
21 was at 25.

22 Q. Was it normal, the routine  
23 to obtain digoxin readings post mortem at this time?

24 A. This would not be routinely  
25







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done but I believe because of specific factors, namely the child's abnormalities of heart rate, both a tachycardia, a fast rate, and a bradycardia, a slow rate, this probably was what led Dr. Costigan to raise the question of digoxin.

I think that he had actually taken two specimens, one that he had obtained for another purpose, I believe electrolytes which he retrieved and had sent for a digoxin level and I believe also a second post mortem specimen.

Q. Did you ask him specifically why he took samples for digoxin testing?

A. I do not recall the details. I probably would of course have asked why that was done, and again he probably did tell me the reasons. The logical reasons would have been the abnormalities of heart rate, but I do not recall the specific conversation.

Q. You gave some evidence, Doctor, about crash carts and the contents of those crash carts. Was it your understanding that digoxin was on crash carts as a standard --

A. No, sir. It was not routinely on crash carts. It was found on some crash carts. When Dr. Costigan comes he will be able





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to give you the details of what he actually found in his inventory. I have spoken with Dr. Costigan in Montreal. It was not on the crash cart on 4A-B. As was also discussed when Miss Rapaport on Sunday found some in the operating room crash cart she made contact with Dr. Rowe and he suggested that this was not a necessary medication for a crash cart and it was removed there.

Q. Can you offer any explanation as to why it would have been found on various crash carts?

A. The only plausible explanation would be that in some of the areas physicians in those areas thought that they would need it in an emergency situation although, as we have discussed, Dr. Rowe and also Dr. MacLeod think that this is not a drug that is needed in such immediacy that it should be kept on a crash cart. As I mentioned, it was not on the 4A-B crash cart. Dr. Costigan was quite explicit about that.

Q. I believe you gave this evidence but I would like you to refresh my mind as to when you became aware of the dig. readings in Estrella?

A. On the following Saturday





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morning Dr. Fowler called me and told me that one of the pathologists, one of the senior staff pathologists, had recalled this and made this information available to Dr. Teperman, and in view of the high level of digoxin found on the Estrella child and the finding on the Pacsai child that the Coroner had decided that a meeting would be appropriate that Saturday afternoon.

Q. Was Mr. Sneddon informed of this meeting?

A. I believe he was. In fact I think he was.

Q. Would you have been the person to inform him?

A. Yes. I certainly informed Mr. Murray, Miss Lund. I believe Miss Lund's notes, if I may refer to them, would indicate that - yes, in her notes it states that I had told her that Mr. Sneddon had recommended that she go to the meeting, and I do believe I called him.

Q. But he was not at the meeting?

A. No, Mr. Murray was the Associate Administrator of the Hospital and he was at the meeting, and Miss Lund. Those were the two administrative people at the meeting.







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Q. Doctor, some time after the discharge of Miss Nelles, it was decided to have Dr. Bain prepare a report. Is that correct?

A. Yes, that is correct.

Q. Can you tell me when the decision was made to have this report prepared?

A. I would have to look up the dates. I cannot recall the details of that.

Q. Could you tell me, Doctor, the circumstances that led to the retaining of Dr. Bain to prepare this report?

A. Various people at the Hospital thought that since there still was a question as to exactly what had gone on, it would be advisable to have somebody look in detail and review each of the patients' charts and the findings with a view to learning as much as possible about the children that were on that ward.

Q. Could you give us some idea, Doctor, of who these various people were?

A. I would guess this would have been people involved in the Risk Management Committee. It would have been people such as Mr. Sneddon, such as - I would guess Dr. Conn, I believe he was on the Committee at the time, myself,





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Dr. Phillips would have been involved. I would have to get a listing of who was on the Committee, sir.

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Q. Did you have a specific meeting, Doctor, at which you decided that this report should have been prepared?

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A. I would believe that this would have come up at the meetings. There were Risk Management Committee meetings at the Hospital. It is a Committee that meets regularly at the Hospital.

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Q. I appreciate that, Doctor, but my question is can you recall a specific meeting where it was decided that this report should be prepared?

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A. I cannot recall the specific meeting in which it was decided but, clearly, - I can recall meetings where the problem was discussed and I assume that at one of these meetings this was decided. I could not give you a date or the arguments in favour of this, or against it.

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Q. Do you recall the guidelines, if any, that were to be given Dr. Bain so far as the compilation of the report itself?

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A. I believe these were broad guidelines. I would think Dr. Bain, of course, could

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testify on this better, in more detail, that he was to review each of the patients in as complete a manner as possible with a view to seeing if there were any other data that would be helpful in ascertaining what happened.

Q. Do you recall specifically if he were told that he should or should not take into consideration the question of digoxin?

A. I don't recall that being done but I would think that clearly, since digoxin had been raised as an issue, that this clearly would be a factor of whether he was so directed or not.

Q. Do you not recall a specific meeting at which the parameters of the report were discussed, and instructions given to Dr. Bain?

A. No, I do not recall the specific meeting or the specific parameters except that he was to review the patients with a view of determining what happened. I would think that digoxin would be a factor, by necessity.

Q. I believe you have indicated this already, Doctor. You are a member of the Risk Management Committee?

A. Yes, sir.

Q. And you would have attended





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most if not all of the meetings at this time?

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A. Yes, almost all of the

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meetings, yes.

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Q. Was there any particular

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reason why Dr. Bain was selected as the person to --

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A. Dr. Bain is somebody with

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great clinical expertise in pediatrics in general  
and, also, Dr. Bain was available.

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Dr. Bain had given up many of his former responsibilities in the Hospital and, thus, the Hospital had an expert available to make this review.

Q. He was, in effect, your predecessor?

A. That is correct, sir.

Q. Now, did you have a chance to personally review any or some of the files and the charts that are being discussed in this hearing?

A. I have seen some of the charts and I have also seen Dr. Bain's report. I went through these on an ad hoc basis. I have not reviewed Dr. Bain's report, of course.

Q. Right. But you did not review these as a clinician or anything like that?

A. I did not review them in the great detail that Dr. Bain has, no, sir.

Q. Or the detail that Drs. Rowe, Fowler and Rose have reviewed these reports?

A. No, I have not.

Of course, Dr. Rowe, Dr. Fowler and Dr. Rose are cardiologists and would have a great deal of knowledge about the cardiac aspects of these patients, which I would not have.





Carver  
cr.ex. (Shinehoft)

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Q. So, it would be fair to say, doctor, that you defer to their opinion as far as the cardiac status of any of these babies are concerned?

A. Yes, sir, definitely.

Q. And as far as the question of digoxin, you are prepared to accept the views of the pharmacologists that are going to come and give evidence here?

A. Yes, sir.

Q. And your role, essentially, was one of an administrator as opposed to a clinician, as far as this hearing is concerned?

A. Yes. With respect to the specific patients involved here, I did not take care of the patients directly and my role would be not direct medical care.

MR. SHINEHOFT: Thank you very much, doctor.

THE WITNESS: Thank you.

THE COMMISSIONER: Thank you.

Mr. Roland.

FURTHER EXAMINATION BY MR. ROLAND:

Q. Dr. Carver, you have told us that Dr. Costigan, who was the Chief Resident at the





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time, reported to you about the digoxin readings concerning the Pacsai infant. Is it normal that Dr. Costigan would have been reporting to you?

A. In any unusual circumstance where there was a problem, the Chief Resident would come directly to me, particularly in something that could require immediate action.

Q. And hearing from Dr. Costigan, is that part of the normal procedure in these circumstances?

A. Yes. Certainly, with a problem of this nature, it would be quite normal for Dr. Costigan to come to me.

Q. The other day, I think you were asked about the availability of a perpetual inventory of digoxin --

A. I have spoken with Miss Gillespie --

Q. Excuse me, I haven't finished the question.

...on the Ward, on 4A/4B, from July 1980 to March 1981. What can you tell us about that?

A. I have spoken with Miss Gillespie, the Pharmacy Director, and she indicated







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that, with the system in place at the time, it would have been impossible to make a specific determination as to whether any digoxin were missing because they did not have the unit dosage system on the ward at that time.

Q. And today, does a different situation exist?

A. There is a unit dosage system on 4A/4B for digoxin, yes.

THE COMMISSIONER: A unit dosage system. Is this the one where you refill -- that is, you take -- there is a vial of some sort which is marked and it is replaced each time?

THE WITNESS: Yes, sir.

THE COMMISSIONER: Is that it?

THE WITNESS: Yes, sir. The pharmacist would specifically draw up the dose for the patient. So that, a prescription would go to the pharmacist who would do the transcribing of the prescription and actually dispensing it and, thus, there would not be measuring by nurses.

THE COMMISSIONER: What happens when, for instance, a prescription is filled? I suppose it is always used, is it? Is that the case, if it is for a specific patient?





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THE WITNESS: If there is a prescription, it would be for a specific person, sir.

THE COMMISSIONER: And it will be used, I take it?

THE WITNESS: Yes.

THE COMMISSIONER: It won't go back to any kind of --

THE WITNESS: Exactly. It would be used for that person at a specific time; so that the material, the medication, is specifically allocated to the patient. The advantage of the system is that the dispensing is by a pharmacist who has good knowledge of the drug, of the best way, the most accurate way of dispensing drugs.

THE COMMISSIONER: I'm sorry, does this apply just to digoxin or to other drugs, all drugs?

THE WITNESS: At this time, on 4A/4B, it applies only to digoxin. There are plans for this being extended to other drugs.

THE COMMISSIONER: Yes. Fine.

I'm sorry, Mr. Roland.

MR. ROLAND: Q. Dr. Carver, we have heard in evidence that there was a pharmacist from September 1980. Do you have any information what





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her knowledge or impression was as far as the digoxin on the ward was concerned and, particularly, whether there was any missing during the period in question, at least from the time she came on the ward in September 1980 until March of 1981?

A. Again, speaking with Miss Gillespie, the Pharmacy Director, she has told me that the pharmacist on the ward had the impression that no digoxin was missing; that there was no indication that there was an absence of digoxin.

This, of course, is very soft data because it is an impression; it is not based on hard data.

Q. Exhibit 187, as put in evidence the other day, are the notes prepared by Dr. Paul Tepperman.

Dr. Carver, on page 3 of those notes, prepared presumably by Dr. Tepperman, at Item No. 7, there is a summary of a discussion that took place between Dr. Tepperman, on the one hand, and you and Dr. Fowler, on the other hand, at a meeting that occurred in the Hospital at about 11:00 p.m. on March 23rd. It indicates, in the notes, the third-to-last item, under No. 7:

"Also same nursing team involved





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in all three."

Do you see that? Page No. 3;  
it is Item No. 7 of that page, about the middle of  
the page and it is the third-to-last item.

A. Yes, I do see that now.

Q. Can you tell us, because  
as I recall your evidence, you told Dr. Tepperman that  
was the same nursing team for Baby Pacsai and Baby  
Miller and that you had been informed of that, you  
thought, by the nursing supervisor sometime that  
evening. Was there any reference to any other baby  
from you or from Dr. Fowler at that time?

A. No, sir. At that time,  
we had, as I mentioned, we had been told that there  
was the same nursing team on Baby Pacsai and Baby  
Miller. Subsequent to the testimony, I have spoken  
with Dr. Costigan, and it appears it was Dr. Costigan  
who noted the same nurses when he was up on the ward.  
He had been involved with both of the patients and he  
had noticed it was the same nurses on those two;  
not with Baby Estrella.

Q. Was it Dr. Costigan that  
you now understand spoke to you about it?

A. Yes. As I recall my  
testimony indicated I was not sure as to who had told







C8

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2 us it was the same nursing team. We had assumed,  
3 logically, that it might have been a nursing super-  
4 visor, but we were not sure. Dr. Costigan specifically  
5 recalls that he was the one who had noted the same  
6 nurses, and this had led to the discussion at a meeting  
7 in my office that they were the same nurses dealing  
8 with the two babies.

9 MR. ROLAND: Thank you very much,  
10 Dr. Carver, those are all the questions I have.

11 THE COMMISSIONER: Miss Chown?

12 MS. CHOWN: No questions.

13 THE COMMISSIONER: Mr. Lamek?

14 FURTHER EXAMINATION BY MR. LAMEK:

15 Q. Dr. Carver, when was the  
16 first meeting of the Risk Management Committee, please?

17 A. I really cannot recall.

18 Q. Do you recall the year?

19 A. I don't recall.

20 Q. Was it subsequent to the  
21 events that are troubling this Commission of Inquiry?

22 A. Again, I am not sure  
23 whether it was before or afterwards.

24 Q. Thank you.

25 Have you read the transcript of  
your evidence from September 19th?





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A. Yes, I have.

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Q. There is one matter that

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I want to refer you to, please.

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It is found, Mr. Commissioner,  
in Volume 35, beginning at page 6902.

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You may recall, Dr. Carver, that  
Mr. Strathy, who is counsel for Nurse Traynor, was  
asking you about what he called, I think, "the ante  
mortem sample drawn from Baby Pacsai".

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A. Yes.

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Q. Do you recall that?

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A. Yes.

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Q. I don't know whether you  
have a transcript available to you, Dr. Carver.

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A. I don't have a transcript  
with me.

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Q. Will you trust me to read  
it? At page 6902, this exchange took place:

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"MR. STRATHY: Q. I would like to  
take you back for a moment, doctor,  
to your evidence concerning Baby  
Pacsai. And as I recall, you  
referred to one of the samples as  
being an ante mortem sample, and  
you suggested you would not have





Carver  
ex. (Lamek)

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reason to question the reliability  
of that sample."

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Your answer was:

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"A. I would not question the  
reliability of the sample. As to  
having the problems of post mortem  
samples where the digoxin level  
appears to go up, I would  
certainly -- the sample would then  
be more reliable."

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Then you will recall that Mr.

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Strathy put to you an understanding that that sample  
was drawn either in the course of, or following,  
resuscitation efforts.

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I am more than happy to read the  
precise language to you, if it would be helpful.

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You agreed with him, do you  
recall, that, in that circumstance, there might be  
some question about the reliability of the levels  
recorded in the sample?

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A. Yes.

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Q. Because of the effect,

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presumably, of what you understand to go on in the  
course of resuscitation efforts?

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A. Yes. With massage of the

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heart, one could postulate - and, again, I would think

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one would want a pharmacologist to do this. I am  
extending into another area --

Q. Of course.

A. -- that, with the  
particular binding, the differential binding of  
digoxin by myocardial muscle, there would be a lot  
of digoxin attached and that it would be conceivable  
that, with the resuscitation, the heart muscle could  
be damaged and release some digoxin.

Q. In fact, you have answered  
my first question about that exchange with Mr.  
Strathy.

I take it you would defer to the  
pharmacologists?

A. I would completely defer  
to the pharmacologists.

Q. The likelihood of that  
occurring?

A. Yes.

Q. You have told us of your  
understanding of the circumstances in which the  
so-called ante mortem sample was prepared.

A. Right.

Q. Mr. Strathy put to you,  
at page 6902:





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question.

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"Q. Well, let me take you to the evidence concerning that sample, because do I understand that the sample you call an ante mortem sample was, in fact, taken either in the course of, or after, the resuscitation efforts on that child and prior to his transfer to the ICU?"

"A. I believe so --".

A. Yes.

Q. And that would raise some question.

Is that still your understanding?

A. Yes, I believe so. I don't have the details on the time relationship between the resuscitation and how much had been done at the time that ante mortem sample had been obtained.

Q. All right.

A. I believe Dr. Costigan would be the person most able to deal with that timing, since he was there.

Q. I am sure he would. No doubt, the chart will be indicative of something, will it not?





Carver  
ex. (Lamek)

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A. Yes.

MR. LAMEK: I wonder, Mr. Commissioner, if the Registrar would put the Pacsai chart before Dr. Carver. It is Exhibit 106.

Q. Page 63 of that record, in the upper right-hand corner - it is also Manuscript No. 9 below that, but I am looking at page 63. It is part of the Progress Notes, Dr. Carver.

A. Yes.

Q. There is a note in the lower half of the page by Dr. Costigan which records that he was asked to see Kevin because of anxiety about - something that I cannot read - and bradycardia, episodes of bradycardia --

A. Yes.

Q. -- down to 50 to 60 --

A. Yes.

Q. -- alternating with rates of 150.

A. Yes.

Q. Now, would you glance over that note for me, please, because, at the end of the note, it reads:

"Transfer to ICU for observation,  
hold digoxin."





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A. Yes.

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Q. And you will agree with

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me that there is certainly no indication there of any  
resuscitation effort having taken place?

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A. It is, as you state, there  
is no indication there.

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Q. But it also appears in

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the course of that note that, in considering the

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cause of what was appearing on the rhythm strip,

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Dr. Costigan went through the differential diagnosis

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procedure and one of the possibilities he raised was  
digoxin toxicity.

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A. Yes. This would follow

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the abnormalities of the heart rate we discussed

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earlier.

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Q. On page 65, there is

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Nurse Nelles' note on the lower half of the page for

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the period from 3:45 in the morning until 6:00 a.m.,

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in which she reports there had been, among other

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things, an apneic spell; that the baby had been bagged.

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I take it that means he had been  
given oxygen?

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A. By a bagging system, to

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give force to giving the oxygen.

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Q. Yes. And he seemed to

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come around. Dr. Costigan was there and arrangements were made to transfer him to the ICU.

A. Yes.

Q. And, again, there is no suggestion in the period from 3:45 until 6:00 a.m. of any resuscitation efforts, is there, Dr. Carver?

A. I don't see any note of that here.

Q. No reference to external cardiac massage or CPR or anything of that sort.

A. Certainly not in that note.

Q. And on page 66, we have again Dr. Costigan's note. On admission to the ICU, he records, in the middle of that note, that on leaving the ward he developed bradycardia 40, cyanosis and brief apnea; responded to stimulation. Then he records the child's condition on entry to the ICU.

Again, no indication of resuscitation efforts of the kind that you were considering with Mr. Strathy.





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Q Now, Dr. Carver, is it not your understanding that Dr. Costigan drew the sample which was later assayed for digoxin immediately after the child's admission to the ICU, upon his arrival there?

A I believe so, but I am not definite on exactly the timing of the sample.

Q He will tell us that when he comes next week?

A Yes.

Q But I want to know your understanding?

A My understanding is that it had been drawn prior to this for another purpose and then he retrieved it for the digoxin assay.

Q Yes, he had a sample drawn, did he not, really for two purposes; one a complete blood count and electrolytes?

A Yes.

Q And then he subsequently had another sample drawn for electrolytes?

A Again, the specific series and the timing I think would be best left to Dr. Costigan.

Q But if your understanding be correct that the sample which was subsequently used





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for digoxin assay was indeed drawn upon the child's  
admission to the ICU, then it appears does it not  
that prior to that time there had been no  
resuscitation efforts performed on this child?

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A. Yes, if it had been drawn at  
that point.

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Q. And therefore with respect to  
the possible effects of resuscitation efforts upon  
the digoxin concentration in that sample, there is  
no need to defer to the pharmacologist, is there?

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A. No.

MR. LAMEK: Thanks, Dr. Carver, that's  
all we have.

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THE COMMISSIONER: Yes, thank you,  
Mr. Lamek. Thank you, Dr. Carver, thanks indeed.

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THE WITNESS: Thank you, sir.

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--- Witness withdraws  
THE COMMISSIONER: I wonder if we can  
have now Dr. Mancer back?

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MR. BROWN: Mr. Commissioner, was I  
correct in hearing Mr. Lamek say that Dr. Costigan  
will be testifying next week?

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MR. LAMKE: Yes.

MR. BROWN: Thank you.

MR. LAMEK: Perhaps while we have an







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empty witness box and we are waiting to refill it,  
I will let people know what I propose for next week.

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THE COMMISSIONER: Yes, all right.

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MR. LAMEK: We expect to hear from  
Dr. Cutz for the balance of this week following  
Dr. Mancer and on Monday and Tuesday Dr. Taylor will  
be here, he is coming in from Vancouver, and on  
Wednesday and Thursday Dr. Costigan will be coming  
in from Montreal.

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THE COMMISSIONER: Yes, all right,  
thank you. Has somebody gone for Dr. Mancer?

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MR. ROLAND: Yes.

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MR. PERCIVAL: Mr. Commissioner, I  
might just point out for the benefit of my friends  
there is a slight problem with the transcript. 8135  
named on yesterday's evidence should follow 8139, it  
is just out of place.

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THE COMMISSIONER: Thank you, it shows  
you are abreast of things, doesn't it?

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MR. LAMEK: It does seem to follow  
8134 though.

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MR. PERCIVAL: 8136 follows 8139.

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THE COMMISSIONER: Yes, all right,  
thank you. Yes, Mr. Hunt?

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MR. HUNT: Thank you, sir.





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DR. JAMES FREDERICK KENT MANCER, Resumed

CROSS-EXAMINATION BY MR. HUNT:

Q Dr. Mancer, if I could deal first with the autopsy report, that is, the final autopsy report on Janice Estrella. Do you have that before you? It is at pages 9 to 12 of Exhibit 91.

THE COMMISSIONER: Page 9?

MR. HUNT: Well, that's where it starts. The page I'm interested in is at page 12, the paragraph that we have dealt with.

Q Now, sir, if I understood your evidence yesterday it was with respect to the last paragraph. You are sure that you had some input into it?

A. Yes.

Q You think that you wrote the last paragraph? You can't be sure, but you may have written the whole paragraph?

A. That's correct.

Q All right. When you gave evidence at the preliminary hearing in the Nelles Inquiry on January 14th of 1982, I believe at that time you were also asked about that paragraph, although, perhaps not in as much detail as you have been today?





D.5

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A. Yes.

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Q. And I will just read to you a portion of the question and answer that is found at the beginning of page 434 and on to 435.

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THE COMMISSIONER: What volume would that be?

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MR. HUNT: That's in Volume 2.

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Q. Now, the portion that I want to draw your attention to is in a rather lengthy answer, so, there will be a little preamble to this question before. It begins at page 434, you are being examined in chief:

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"Q. And assuming that the samples were correct you reached certain conclusions, is that right?"

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And the reference is to the samples in the Estrella case.

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A. Yes.

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Q. Your answer was:

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"A. Yes. Well, we had originally - well, when I checked out the autopsy of Dr. Taylor a number of findings of abnormalities that the patient had, the evidence of heart failure and early bronchial pneumonia, I thought





D.6

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And then in quotes:

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"'samples of postmortem blood were

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"that there was sufficient evidence there to explain the death. It was news to me at the time that we checked the autopsy out that digoxin levels had been obtained and Dr. Taylor brought this up at the time that we had this value of 72 nanograms per millilitre. We discussed it for a period of time, looked up the normal values and found that this was vastly increased above the normal therapeutic level. And in fact about 50 times as much as one would have as the therapeutic levels that were obtainable on the charts that I have as the maximum therapeutic level.

"Q. 50 times the maximum therapeutic level?

"A. Yes. And I considered that this was so out of line, so beyond belief that I thought there must be an error. So, I wrote a note at the end of the report saying ... "







D.7

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"obtained for assay of digoxin levels.

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These samples were contaminated

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slightly by edema fluid and ascitic

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fluid. The digoxin levels on these

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samples measure 72 nanograms per

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millilitre toxic range'."

And then I put a bracket:

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''(2.0 to 9.0 nanograms per millilitre)'

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according to the table that I was using.

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That is toxic range not therapeutic."

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And then:

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"This level is markedly elevated over

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the normal therapeutic range and if

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accurate would explain the death of the  
patient."

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Now, sir, do you remember being asked

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the questions and giving that answer?

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A. Yes. I read the preliminary

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report transcript that I have.

19

Q. That was January 14th of 1982.

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Would you agree with me at that point it would appear  
that you wrote the entire paragraph?

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A. Yes.

22

Q. And would your memory with respect

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to that likely have been better in January of '82 than

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D.8

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it is here in September of '83?

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A. Yes, I would think so.

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Q. So, can we take it, sir, that in all likelihood you wrote the last paragraph of this report?

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A. Well, I think that Dr. Taylor - I would value his comment on it too. If he had prepared something - like, I know I wrote something and if he had prepared, if he knows that he had prepared part of this paragraph I would accept that.

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Q. All right. Well, it would appear your recollection at the time was that you wrote the whole paragraph?

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A. Yes.

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Q. All right. Now, why I raised that is because there is a reference in this paragraph to samples.

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A. Yes.

Q. And the reference is that both samples, that is, plural, or at least samples, plural, were contaminated. Now, if in fact you wrote that paragraph, I take it that the information you were recording there must have come to you from Dr. Taylor?

A. Yes.

Q. Because you yourself had nothing





D.9

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to do with the taking of the samples.

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A. That's right.

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Q. All right. So that we know that that is not your account of some incident that you were personally involved in?

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A. That's right.

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Q. And it is your setting down of something you were told?

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A. Yes.

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Q. Would you agree with me that in those circumstances it is entirely possible that your recollection of the reference to samples plural was incorrect?

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A. Yes, it is possible and it is still possible that I didn't write the whole paragraph.

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Q. Yes, all right. Well, leave and excepting that, if we can assume for the purposes of these questions that perhaps you did, I take it you would agree with me that the reference to samples plural, inasmuch as it was something told to you by someone else, could be in error on your part?

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A. Yes.

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Q. Now, the reason why I raise that, sir, is because Dr. Taylor in giving evidence with respect to the taking of the samples at the preliminary







D.10

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inquiry, and I am referring, Mr. Commissioner, to  
Volume No. 17, evidence given by Dr. Taylor on the  
15th of February in 1982 at page 113. First of all,  
he said the following in answer to some questions in  
examination in chief. Beginning at about line 29:

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"Q. All right. So, you obtained one  
sample from the leg and one from the  
cavity below the stomach?

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9

"A. Yes.

10

11

"Q. And would either of those exhibits  
be contaminated in any way to your  
knowledge?

12

13

"A. Yes. The pelvic sample was most  
likely contaminated with edema fluid  
from the tissues and from ascites fluid  
from the cavity itself.

14

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"Q. All right. When you say  
contaminated, I use the phrase  
contaminated, would that mean diluted  
or what?

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19

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"A. The blood would be diluted by  
these fluids, yes.

21

22

"Q. Diluted by the fluids?

23

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"A. Yes.

"Q. So, you obtained these samples in





D.11

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"order to obtain digoxin levels?

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"A. Yes."

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Now, in that portion of the evidence  
would you agree with me, Dr. Taylor doesn't indicate  
that it was anything other than the pelvic sample  
that was most likely contaminated?

6

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A. That's right.

8

Q. Right.

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MR. ROLAND: Well, to be fair to  
Dr. Taylor as well, he isn't asked that specifically  
about the leg sample, he simply says, he begins by  
talking about the - as my friend has read it - about  
the contamination of the pelvic sample and he is then  
asked some questions about contamination and they  
never get back to specifically whether or not the  
leg sample was contaminated.

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MR. HUNT: Well, it gets better, so,  
we will go on and perhaps it will answer my friend's  
concern.

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Q. Just dealing now with page 115  
where the same matter is dealt with in chief, the  
Court asks a question:

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"Are you saying you brought the  
specimens yourself to the chemistry  
lab?





D.12

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"A. Myself, yes."

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And then Mr. McGee, the Crown Attorney, asked another series of questions:

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"Q. All right. And the procedure we have been advised is that that form is filled in and then there is a tag that is on one end of it and is removed and put on the specimen container itself. Is that the procedure you follow?

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"A. I'm not sure if I did that in this case. I usually don't handle this paper work it is done by the autopsy assistant, so, I can't say for sure if I did or not.

15

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"Q. You can't say for sure if you did?

17

"A. No.

18

"Q. But you completed that requisition?

19

"A. Yes.

20

21

"Q. Do you know what happened to the other copies of that particular document?

22

"A. No.

23

"Q. All right. And you then took it

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D.13

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"to the lab itself, is that correct?

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"A. That's correct, yes.

4

"Q. Do you know who you gave it to there?

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"A. I don't know the name, it was just the person receiving specimens who logs the specimens in and deals with them after that.

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8

9

"Q. Who deals with them after that?

10

"A. I don't know.

11

"Q. All right. And that refers to two specimens, A and B. Why is that?

12

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"A. There were two samples. There was a small sample of blood obtained directly from a leg vein and the larger sample, which I thought might be contaminated with body fluids and I had them in separate vials.

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"Q. You had them in separate vials?

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"A. Yes."

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Again, my question is, in his reference to taking the two samples to the Biochemistry lab, would you agree with me that he only makes reference to thinking that the larger sample, which he has indicated came from the abdominaal cavity was the contaminated one?







D.14

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A. Yes.

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Q. All right. And finally at page 121, again being asked in chief questions by the Crown Attorney, Mr. McGee, beginning at about line 4, the last line of the previous answer is:

"So, the result of 72 was mystifying to me.

"Q. Mystifying to you?

"A. Yes.

"Q. If the blood had been obtained in the area below the stomach, in an area where it would have been mixed with other fluids, would that have diluted the amount of digoxin that would have been found in that area?

"A. Most likely yes.

"Q. It would have diluted it?

"A. Yes.

"Q. And the amount that you obtained, you obtained an amount from there and also you indicated from a vein of the leg?

"A. Yes.

"Q. The amount that you obtained from the vein in the leg, I take it would





D.15

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"not have been diluted with any or  
contaminated with any other fluid?

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"A. No, it was blood."

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Now, would you agree with me that in  
answering those questions Dr. Taylor very specifically  
answered the question that the sample of blood taken  
from the leg vein was in his view not contaminated?

8

A. Yes.

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Q. All right. Now, inasmuch as  
Dr. Taylor has given that evidence and was the person  
who actually took the samples, I take it you defer to  
his opinion with respect to the integrity of the  
samples?

14

A. Yes.

15

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Q. All right. And may we take it  
then that the reference to samples plural in the final  
autopsy report is in error?

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A. Yes.

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THE COMMISSIONER: I am sorry, it is  
in error?

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THE WITNESS: Well, if I were to write  
that paragraph now with what I know, I would have said  
samples of postmortem blood were obtained for assay  
of digoxin levels. A sample taken from the peritoneal  
cavity was contaminated slightly by edema fluid and





D.16

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ascitic fluid. The digoxin level on that sample measured 72 nanograms per millilitre and the rest would be the same.

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Q. All right. So, in other words you are excluding the sample taken from the leg vein in the reference to contaminated ---

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A. Yes, because I know that particular sample was used up entirely without being able to make a precise measurement.

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Q. That's right. So, I am not being critical, I think you have indicated inasmuch as this was information to you, if you wrote it it is quite conceivable that an error could have occurred in simply referring to them in a plural?

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A. Yes.

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Q. So that we have it clear, the reference as it stands to samples in the plural in that paragraph now is in error?

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A. Yes.

Q. All right. Now, you indicated that when you were told of the level of 72 nanograms with respect to Janice Estrella that you had very strong doubts as to the accuracy of it?

A. Yes.

Q. And I think you at that time, or







D.17

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were you at that time viewing that sample in the context of your normal experience with the clinical history of patients who were receiving therapeutic doses?

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A. Yes.

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Q. So, the reason why you doubted the accuracy was because it simply was such a startling contrast to what you were used to experiencing in terms of levels of digoxin in the blood where it was being administered for therapeutic purposes?

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A. Well, no, that goes beyond my experience really. I hadn't had any experience previously with digoxin, postmortem digoxin samples.

14

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Q. All right. In connection with your work as a pathologist though I take it you had some basic understanding of digoxin and digoxin levels?

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A. Yes, I have some basic understanding of the pharmacology of digoxin.

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Q. All right. And what would constitute therapeutic levels?

A. Well, therapeutic levels by the tables that I was referring to at the time, which were the only ones in my possession, would be in the range of - well, I believe it was 1 to 2 nanograms per millilitre.





D.18

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Q All right. I'm just trying to get your reaction into the proper context. I take it you had to have some knowledge or experience against which to examine this level of 72 nanograms and come to the conclusion that it wasn't accurate. If I understand what you're saying it is against your background of really a general knowledge of digoxin in therapeutic levels that you found the 72 nanogram level startling?

A Yes, and knowledge that digoxin is a drug with a rather narrow safe therapeutic range. I have heard it said in my experience prior to 1981, early 1981, that it has been often said that digoxin is a drug that would have very great difficulty in passing the requirements for a safe drug nowadays because it is so toxic. But long experience with the use of digoxin clinically we realize it is a very valuable drug and of course it is being used. But if it were a new drug there would be a lot of difficulty with it. This is general medical knowledge.

Q And that is because of the tremendously powerful effect it has even in small doses I take it?

A Yes.

Q Now, is it the case that at that





D.19

1  
2 time, and this is back in March of '81, given your  
3 knowledge and your experience at that time, had you  
4 been examining postmortem serum for digoxin you would  
5 have expected to find much lower levels than 72  
6 nanograms?

7 A. Yes.

8 Q. And that in part accounts for your  
9 reaction to the level as simply it wasn't accurate?

10 A. Yes.

11 Q. And would it be fair to say that  
12 if in the case of Janice Estrella you had been at  
13 that time looking for digoxin and expecting to find  
14 significantly lower levels, if you had been aware  
15 that she had been off digoxin from the 7th of January,  
16 which is about four days before she died, and she  
17 hadn't had any administered, there was an order that  
18 none be administered for those four days and that the  
19 levels during the 8th and 9th of January, on the 8th  
20 greater than 4.7 and on the 9th a level of 4.7,  
21 suggesting it was coming down, would that have given  
22 you further cause to expect to find much significantly  
23 lower levels than 72 nanograms?

24 A. If I was aware of that I would  
25 have.

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Q. I appreciate you were not aware of it, but I am suggesting that, if you were, you would have.

A. Yes.

Q. I think you indicated to Mr. Lamek that, at the time you reacted this way to the level - that is, you thought it simply could not be accurate - you were not really considering the aspect of contamination. It may have crossed your mind but you were focusing more on a calculation error, I think you said.

Is that fair?

A. Yes, some sort of error related to the measurement or calculation was my main consideration.

Q. Would it be that that was your main consideration because, at that point in time, contamination, given your understanding of it and what you thought about it at that time, really was not a critical issue?

A. Yes. I did not think that contamination would have, in itself, accounted for the extremely high level. I just did not know as much as is now known about digoxin.

Q. Is it not the case that,







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at that point in time, insofar as contamination was concerned, you were of the view that the contamination, if anything, would have resulted in a lower level of digoxin?

A. That's correct.

Q. So that, once one accepts that a level of 72 nanograms is so high that it is virtually a fatal level, it does not really matter whether or not the level prior to the contamination was double or triple that; is that not fair?

A. I'm sorry, would you restate the question.

Q. Once you had accepted -- once one accepts that the level of 72 nanograms per millilitre is so high - it is indeed a fatal level - the fact that that is a lower level as the result of contamination really renders the question of contamination one of little significance, does it not?

A. Your question is sort of in two parts.

Q. All right. Answer it in two parts.

A. I will start off then by the first part.

You said that I would accept 72





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as a fatal level. Well, that is not quite right. 72 is far beyond what I would expect a person to ever attain if they had been receiving therapeutic digoxin - they would have died before the level ever reached that. I did not really consider the possibility that a massive dose might have been given intravenously. That is what I later, after it became apparent that there was a problem with digoxin in the Hospital with overdoses, then I thought of that possibility.

Q. All right. But in the autopsy report itself, the very last sentence states that this level - that is 72 - is markedly elevated over the normal therapeutic range and, if accurate, would explain the death of the patient.

All I am suggesting to you is if a level of 72 nanograms per millilitre would explain the death of the patient, and that is a low level because of contamination, the issue of contamination really is not of great moment, is it?

A. I think it is at this point in time.

Q. I appreciate it is. I am not asking you about right now, but I am taking you back to that point in time when you were reacting to





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the news of the level and in the days subsequent, and I am suggesting to you that the reason why you were more concerned with a calculation error, or at least that that came to you as a better explanation, is because of your view, at that time, that the contamination could only lower the digoxin level.

A. That would have been my view at that time.

Q. So, given that was your view at the time, contamination of this sample, so far as you were concerned, really would not be of great concern in terms of explaining the death?

A. It was not to me at that time.

Q. You held that opinion at that time and you have indicated that you have changed that opinion now but you certainly held that opinion from that point in time up until at least the preliminary hearing when you testified in January of 1982, is that right?

A. Yes, that is correct.

Q. So, between March of 1981, when the investigation first began, and the time you testified at the preliminary hearing of Susan Nelles, your opinion was always the same?







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A. Yes.

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Q. That contamination of that

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fluid would have the effect of probably rendering a  
lower digoxin level than was actually there?

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A. Yes.

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Q. And that was an opinion

7

that you have indicated you advanced or expressed  
certainly at least at a meeting on March 24th?

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A. Yes, of 1981.

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Q. I take it that would not

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have been the only time you would have expressed that  
opinion, either in a formal meeting or with colleagues,  
when discussing the matter?

12

13

A. I cannot recall specifically  
any meetings where we would have discussed it.

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Q. Other than the March 24th?

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A. Other than the March 24th.

17

There may have been informal meetings with colleagues  
where I might have discussed it, or with Dr. Taylor,  
but I cannot specifically recall.

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Q. In that period of time,

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from the date on which you heard of the Estrella level,  
and up to March 24, were there any dissenting voices  
to that view that were drawn to your attention?

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In other words, did anyone say,

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Well, Dr. Mancer, that cannot be the case; you are wrong. This contamination has the effect of rendering that sample useless.

A. No, I am not aware of any dissenting voices, or I might have changed my opinion between then and the preliminary hearing.

Q. So far, I have only asked you between the time you heard of it up to the meeting of March 24th, and you are not aware of any dissenting voices to the opinion that you have just expressed in that period of time?

A. That's right.

Q. Or you perhaps would have changed yours?

A. If I had come into new knowledge related to the pharmacology of digoxin that might have caused me to change my opinion, I might well have.

Q. And from the point in time of March 24th through to the point when you gave your evidence at the preliminary hearing - I think it was on January 14, 1982 - I take it you did not hear any dissenting opinion in that period of time?

A. That is correct.

Q. So, the information that you



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had that caused you to form that opinion, as far as  
you were concerned, was still valid up until the point  
when you gave your evidence?

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A. That is correct.

6

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THE COMMISSIONER: I am waiting  
for objections, but nothing is happening, so I guess  
I should keep quiet.

8

9

It does seem that you are bounding  
with leaps of seven leagues into the second branch --

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11

MR. HUNT: I don't intend to  
pursue it any further --

12

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THE COMMISSIONER: I don't think  
you have to.

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MR. HUNT: I can explain why I was  
so audacious as to get into that.

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The doctor has said he has  
changed his view in the interim from what happened  
from March 24th and he has now given his new opinion  
and I was really just trying to pinpoint the time at  
which that changed.

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As you can appreciate, it becomes  
critical from the point of view of other people  
who acted on information --

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THE COMMISSIONER: All I am saying  
is, it may well be critical but it is in the second











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branch, not the first branch, of this Inquiry.

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MR. HUNT: All right.

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Q. If I could just say, then, the information that you have indicated yesterday and today that has caused you to alter your view with respect to the significance of the contamination is something that, obviously, you have garnered between the preliminary hearing in January 1982 and now?

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A. Yes.

10

11

12

Q. I had another question on that but I forget it. So, if I remember, I will come back.

13

14

Dealing with Dr. Ellis and Dr. Teperman, when you received word of this, you indicated that you went over to Dr. Ellis' office.

15

A. That is correct.

16

17

Q. I take it that what you were concerned about was the accuracy of this reading?

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A. I was going to report it to Dr. Teperman, regardless of whether Dr. Ellis was confident about the accuracy or not, in light of the Pacsai case. I had already placed the call for Dr. Teperman and intended to notify him, regardless of what Dr. Ellis told me.

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24

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Q. I appreciate you were not





1  
2 going to make your decision to report it based on  
3 anything that Dr. Ellis might have said, but you have  
4 indicated that you were concerned about the accuracy  
5 of the level.

6 Was it your intention to discuss  
7 that question with Dr. Ellis?

8 A. No. Dr. Kutz indicated  
9 to me that he had got the information from Dr. Ellis  
10 about the high digoxin in Pacsai, and I did not even  
11 know at that point who did the digoxin assays in the  
12 Hospital. Since he had got the information from  
13 Dr. Ellis, I thought it reasonable to discuss the  
14 matter with him.

15 Q. Once you heard from Dr.  
16 Kutz or Dr. Ellis with respect to the sample, did you  
17 then conclude that the reading, at least in terms of  
18 the calculation that brought it about, was accurate?

19 A. Not entirely. Dr. Ellis  
20 explained his method to me and how he went through  
21 the dilutions and everything, but that does not  
22 necessarily explain that there is not something basical-  
23 ly wrong with the technique that was used.

24 I also became aware that other  
25 digoxin tests were done on that day. That would serve  
as some control, if they were done at the same time.





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That would serve as some control over how accurate the digoxin in Estrella was. If they were all abnormal, that would indicate that there would probably be something wrong with the Estrella reading as well.

Q. Were your concerns about the calculation of the level sufficiently alleviated, after you received the information, that you began at that point to consider possibilities other than a calculation error?

A. Yes. I was not only concerned with the calculation error as being the reason for the high level; any error related to the analysis could have been a possibility.

Q. But at least, when you had received information with respect to the manner in which the testing had been done, to some extent, your original concerns, I take it, must have been alleviated?

A. To some extent, I would think.

Q. Would it be fair that, at that point, questions, such as actual overdose - whether it be accidental or negligent or intentional - started to enter your mind?





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A. Yes.

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Q. And of those three

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possibilities of overdose; that is, accidental or  
negligent or intentional, would it be fair to say  
that the question of intentional overdose was, at  
that point, probably the furthest from your mind?

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A. Yes.

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Q. Would that be because

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that notion of an intentional overdose is really an  
unspeakable and unthinkable thought for you as a  
doctor?

11

A. It is something that I

12

had not had experience with in a hospital setting  
and it is nearly unthinkable, but not quite.

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Q. You indicated that you

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spoke to Dr. Teperman in Dr. Ellis' office; that is,  
by telephone. So, his call was returned to you while  
you were there.

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I think you said that it was

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after you talked to Dr. Teperman that you began to  
contemplate something sinister.

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A. No, I think the way I said

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it was, Dr. Teperman was the first one to bring up  
the possibility of something sinister. In our

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23

conversation --

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Q. I take it he raised this  
as a possibility?

A. Yes.

Q. That there was, perhaps,  
someone who was intentionally killing babies?

A. It was a conversation that  
went on with me reporting the case as needing  
investigation in light of the high level in Pacsai  
and, now, giving more weight to this unusually high  
level in Estrella. I was reporting it with the idea  
that it was possibly a therapeutic error and, really,  
I had not begun to think about the intentional aspect  
of it.

Q. So, in the course of your  
discussion on the telephone with Dr. Teperman, as you  
related information to him, possibilities were  
canvassed by both of you?

A. Yes. I put forward the  
possibility of therapeutic error.

Q. All right.

And he, I take it, then, raised  
the question of something much more sinister than that?

A. Yes.

Q. He, in effect, voiced the  
unspeakable possibility for the first time?





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A. Yes.

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MR. HUNT: Would this be a convenient time to break, Mr. Commissioner?

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THE COMMISSIONER: Yes. Twenty minutes.

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--- recess.

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---On resuming.

THE COMMISSIONER: Yes, Mr. Hunt.

MR. HUNT: Q. Doctor, before the break we had left off with you speaking to Dr. Tepperman on the telephone from Dr. Ellis' office. I think you indicated that during that call he in effect voiced the unspeakable to you, the possibility of something sinister in the nature of an intentional overdose as a possibility?

A. That is correct.

Q. Now you indicated yesterday that you could not recall if you told Dr. Tepperman about the contaminated sample during your telephone conversation?

A. That is correct.

Q. Now I suggest, sir, that perhaps the reason for that again is, as we have just discussed, that in terms of the lethal overdose at that point in time, as far as you were concerned the contamination simply meant the result which you got was probably lower than was actually there?

A. I don't think that my thoughts had reached that stage yet. At the time I talked to Dr. Tepperman it was only about - it was within half an hour of hearing the results from Dr. Cutz





1  
2 of the Pacsai case. All that was really in my mind  
3 was that we had another case that was similar to  
4 Pacsai, that is a very high reading and that it  
5 needed reporting.

6 Q. So perhaps it would be fair  
7 to say that at that point in time, that is during the  
8 phone call, that question of contamination wasn't  
9 really of great concern to you in the context of the  
10 overall picture that you were dealing with?

11 A. Yes.

12 Q. That is two separate instances  
13 of it?

14 A. Yes, two separate instances  
15 of high digoxin I thought was significant and needed  
16 reporting and investigation.

17 Q. Now, do you recall how long  
18 you spent on the telephone with Dr. Tepperman?

19 A. Probably in the range of  
20 five, maybe even ten minutes.

21 Q. And then Mr. Scott asked you  
22 a number of questions concerning your knowledge as  
23 to whether Dr. Tepperman attended at Dr. Ellis' office  
24 that day. Did you remain in Dr. Ellis' office for  
25 very long after your conversation with Dr. Tepperman?

A. No, I don't think I did.







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Q. I take it that during the course of that call you left the matter in his hands really at that point?

A. Yes.

Q. And I take it you had known Dr. Tepperman from other cases prior to this?

A. Yes.

Q. And knowing him, would it surprise you to know that he attended at Dr. Ellis' office very shortly after his phone call with you?

A. It wouldn't surprise me if he did.

Q. And in fact spoke to Dr. Ellis about the very matters that you had spoken to him of?

A. It wouldn't surprise me, no.

Q. And you are aware that that evening, he along with Dr. Bennett called a meeting for the very next afternoon at the Coroner's office to discuss the Estrella and Pacsai case with representatives of the Hospital Administration and the Divisional Cardiology?

A. I have become aware of it, I didn't know of it immediately.

Q. I take it you were not present at the meeting?





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A. No, I was not.

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Q. To your knowledge was anybody  
from the Pathology Department present at the meeting?

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A. No.

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Q. Now, I think you fairly said  
that by March 20th, that is the Friday, the  
conclusion of digoxin overdose certainly was beginning  
to appear to you by late afternoon?

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A. Yes.

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Q. And it was in the course of  
the next few days that I suppose, and thinking about  
it and discussing the matter, your views with respect  
to Estrella and the contaminated sample, and other  
questions with respect to digoxin started to form and  
crystalize?

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A. Yes.

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Q. And by March the 24th, or  
the 25th, you had concluded that in light of all  
the circumstances you were dealing with that Baby  
Estrella died of digoxin overdose?

18

19

A. I'm sorry, with the coughing  
I didn't hear you.

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Q. Oh, I am sorry. By the 24th  
or 25th, after going through this process over those  
days, where you considered the various issues, the

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1  
2 contaminated sample, you had come to the conclusion  
3 that Baby Estrella had died of digoxin overdose?

5 4 A. That was the conclusion, the  
5 best conclusion that we could make at the time we  
6 drew up that table.

7 Q. That is all I am referring to  
8 at that point in time.

9 A. Yes.

10 Q. Not just with respect to  
11 Baby Estrella, but also with respect to Babies  
12 Pacsai, Miller and Cook, the same result was that the  
13 best conclusion was they had died from digoxin  
overdose.

14 THE COMMISSIONER: I am not sure of  
15 Cook. You can answer this question if you want to,  
16 Doctor, you don't need to -- if you are basing it  
on that exhibit.

17 MR. HUNT: Exhibit 198?

18 THE COMMISSIONER: Yes.

19 THE WITNESS: The table was of course  
20 drawn up by Dr. Cutz.

21 MR. HUNT: Q. Can we just wait a  
22 second until the Commissioner has it.

23 THE COMMISSIONER: Yes, I take it back,  
24 it was, I am sorry.  
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MR. HUNT: All right.

Q. Now the question just to put it again, I think I can put it in the same terms. By the 24th and 25th it was not only with respect to Baby Estrella but also Babies Pacsai, Miller and Cook, that your best conclusion at that point in time was they had died from digoxin overdose?

A. I would answer the question as yes if "your" is to mean Dr. Cutz and myself, because he was the one that was involved in Miller and Cook and Pacsai.

Q. I understand that, that is fair enough.

A. And we drew up the table together.

Q. It was a joint decision as between you and Dr. Cutz?

A. Yes.

Q. Could I suggest to you, sir, that really what you did during those days from March the 20th through to the 24th and 25th was, you stepped out of the narrow role that you normally play as a pathologist, in the sense that you looked at the larger picture than just the individual patient that you would normally look at in the autopsy in







1  
2 preparing the report?

7 3 A. Well - okay - your question  
4 runs from the 20th to the 24th?

5 Q. Well to the point in time of  
6 the 24th and the 25th when you had reached these  
7 various conclusions. I can break it down if it would  
8 be easier.

9 I am suggesting really that what you  
10 did at that point in time was you looked at a number  
11 of circumstances relating to a number of different  
12 babies. You put them together, and weighed them  
13 and assessed them together. Would that be a fair  
14 characterization of what was going on?

15 A. No. I think that between  
16 the 20th and the morning of the 24th I had very  
17 little involvement. It was a weekend, I was not on  
18 call, Dr. Cutz was actually on call. I was aware of  
19 the problem in the Hospital with two cases of high  
20 digoxin, and I was aware that there was consideration  
21 being made of the possibility of therapeutic over-  
22 dose versus - well, with that one comment of Dr.  
23 Tepperman's, the possibility being considered of  
24 intentional overdose as well. But as far as I was  
25 concerned I reported it and the investigation was  
underway and I didn't become involved again until the





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24th.

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Q. All right.

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A. I may have thought about it  
in that time but ---

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Q. Well then when you became  
involved on the 24th, obviously as between you and  
Dr. Cutz there was certain discussion with respect  
to the babies that are listed on Exhibit 198, is  
that right?

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A. Yes. We had arranged this  
meeting on the morning of the 24th and we came into  
possession of a list of cases which were under  
investigation. We understood that we had to get the  
cases completed as quickly as possible.

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Q. Okay. But at that point in  
time as you started to examine this and come to  
your best conclusion with respect to cause of death,  
I am suggesting to you that you really were looking  
at various factors in combination with each other  
relating to the various deaths, in order to come to  
those conclusions?

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A. I think you had better restate  
the question again.

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Q. I will go at it in a different  
way. Am I right that normally insofar as your role





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2 is concerned; a patient dies and is sent down to  
3 your section for a postmortem examination. In  
4 determining the cause of death the normal parameters  
5 for the investigation are that particular patient,  
6 the clinical history and the pathological findings?

A. Yes.

7 Q. And what I am suggesting is  
8 that in light of the very unusual circumstances that  
9 were prevailing in the Hospital on the weekend of  
10 March 20th, 21st and 22nd and up through to the  
11 24th and 25th, as you sat down to come to your best  
12 conclusion as to the cause of death with respect to  
13 the babies on Exhibit 198, you had really gone -  
14 you had stepped out of that narrow role of examining  
15 each one only within the parameters of that particular  
16 child, and you were now assessing combinations of  
17 factors relating to more than one child in coming  
18 to your decision?

18 A. Yes. As of the period after  
19 the meeting of March 24th we started to consider  
20 all of that in drawing up this list.

20 Q. I am not trying to be critical  
21 or anything of that nature. I am just suggesting  
22 that whereas normally you and perhaps doctors generally  
23 are examining the cause of death in isolation with  
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respect to that particular patient, the unusual circumstances prevailing at this point in time were really compelling you to look at a number of factors relating to a number of different deaths, and to weigh them and assess them together?

A. Yes.

Q. And that is a marked departure from the way in which you would normally carry out that type of an assessment if required?

A. Yes, I think that is a fair statement.

Q. I take it, sir, in light of Exhibit 198, that notwithstanding certain conclusions that may have been arrived at at different points in time prior to that, that once you stepped outside of the normal approach to the question of cause of death, and you and Dr. Cutz started to look at the larger picture involving these various factors and combinations, that it was after that process your best conclusion was that these four babies that I have referred to, Estrella, Pacsai, Miller and Cook died of digoxin overdose?

A. That was our best conclusion at the time.

Q. But it was as a result of that







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assessing and weighing of all the various factors?

A. Yes.

MR. HUNT: Thank you. Those are all the questions I have.

THE COMMISSIONER: Thank you, Mr. Hunt. Mr. Percival.

CROSS-EXAMINATION BY MR. PERCIVAL:

Q. Dr. Mancer, I don't want to rehash some matters; but it seems to me that if one reads your postmortem report with respect to Estrella, that you discussed with Dr. Taylor on March the 3rd and 6th of 1981, when you talked in terms of the samples being contaminated, the word as I understand it is:

"These samples were contaminated slightly by adema fluid and ascitic fluid."

Are those the words?

A. Those are the words.

Q. Mr. Scott yesterday started talking in terms of fecal matter being a source of contamination and other matters. The only thing you directed your mind when you were talking to Dr. Taylor was ascitic fluid and adema fluid?

A. That is correct.





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Q. And do I take it that as a result of thinking of contamination in those terms, the level of 72 was probably low if anything rather than a high estimate of the actual digoxin?

A. That was our estimation.

Q. That's right. Now, when you talked to Dr. Taylor on March 3rd to 6th of 1981, do I take it you did not have the actual medical records or chart of Janice Estrella in front of you?

A. No I wouldn't ordinarily have that.

Q. And therefore talking in terms of therapeutic levels, and what dosage she had been on, and what, there is no way you could have checked at that point if you didn't have the medical records in front of you?

A. That is right.

Q. Then you told the Commission that at some point in time you met with Dr. Cutz on March 20th and were made aware of the digoxin levels in Pacsai?

A. Yes.

Q. And I think you have already told the Commission that you went, you placed a call to Dr. Tepperman, started to think in terms of the two





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2 cases, and then went to the office of Dr. Ellis that  
3 evening of March 20th?

4 A. No, it was the afternoon.

5 Q. How late in the afternoon?

6 A. Well it was about 3:30 in the  
7 afternoon that Dr. Cutz came to me and it was roughly  
8 3:50 or 4 o'clock or so that Dr. Tepperman and I had  
9 that conversation.

10 Q. On Dr. Ellis' desk at that  
11 particular point was the complete medical records of  
12 Janice Estrella?

13 A. That is correct.

14 Q. Together with some other  
15 relevant documents relating to Kevin Pacsai?

16 A. Yes. I can't recall whether  
17 it was - whether Kevin Pacsai's chart was there or  
18 not, I believe it was. But there was, he had his  
19 log book open ---

20 Q. In any event, is that the first  
21 time then that you looked at the medical records of  
22 Janice Estrella on the afternoon of March 20th, in  
23 Dr. Ellis' office?

24 A. Yes.

25 Q. And did you look for the  
digoxin that had been administered to this child





1  
2 back in January, prior to her death?

3 A. I looked up the digoxin data,  
4 yes.

5 Q. And did you notice that there  
6 was anything strange or unusual about the medical  
7 records that then existed on Janice Estrella at that  
8 moment in time?

9 A. Yes. I noticed that there  
10 was, at least it seemed to me that there was some  
11 data missing, some page missing possibly.

12 Q. This was in relation to the  
13 drug administration records?

14 A. Yes.

15 Q. And was there also some  
16 apparent changes involving the digoxin doses given  
17 to this child, circled and initialled in red?

18 A. Yes.

19 Q. Did this particular apparent  
20 missing page and other strange things in the Estrella  
21 medical records, did this heighten your suspicion,  
22 or your problems with respect to the Estrella matter?

23 A. Somewhat. I reported these  
24 to Dr. Tepperman as well.

25 Q. Yes I understand and that is  
why I am asking you.







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A. Yes.

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Q. I want to know did that also  
give you some measure of concern, that afternoon?

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A. Yes.

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Q. And do I take it from what  
you said that you did not discuss - and I think you  
have said this at page 8087 yesterday, line 8; you  
did not discuss the matter of contamination of the  
sample on the Estrella matter with Dr. Ellis at that  
meeting?

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A. With Dr. Ellis?

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Q. Dr. Ellis.

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A. I can't recall whether the  
issue of contamination came into the conversation  
with either Dr. Ellis or Dr. Tepperman. I can't  
say it didn't, but I can't remember that it did.

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Q. Well at question, page 8087,  
line 6 yesterday, line 3:

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"Q. All right, did you have any  
discussion at that time with Dr. Ellis  
about the suspected contamination of  
the Estrella sample which had yielded  
the 72 nanogram measurement?

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A. I don't know that I did have any  
discussion about contamination I can't

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"recall about that."

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A. Yes.

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Q. Is that as far as you can  
go in relation to that issue?

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A. And I am still in the same  
place.

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Q. Thank you. In any event you  
discussed the Pacsai matter and the Estrella matter  
with Dr. Ellis?

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A. Yes, to some extent.

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Q. Well did you both form any  
conclusion as to, first of all, the similarity of the  
results of the postmortem samples?

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A. That they were high, yes?

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Q. Yes.

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A. Yes.

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Q. Well, not high, how about  
toxic?

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A. Well we certainly - it was  
certainly apparent to both of us that they were high.

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Q. Dr. Mancer, you were thinking  
in terms, at least back in March of 1981 and as late  
as January 1982, of therapeutic records that showed  
the therapeutic doses in the one to two level?

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A. Yes.

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Q. 72 and 25 are above the  
therapeutic level?

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A. Yes, but you will recall that  
yesterday that I said that 72 was so much above the  
therapeutic and above the ordinary toxic range that  
they were unacceptable.

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Q. I know that. But surely you  
must have discussed that with Dr. Ellis in that  
afternoon. Surely you said; well, was there a lab  
error. I gather you formed a conclusion that there  
was no lab error after discussing it with Dr. Ellis?

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A. I didn't form that conclusion,  
no.

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Q. Did you form any conclusion  
of the likely error in sampling or testing?

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A. No, I didn't, I wasn't at the  
point of forming conclusions.

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Q. Well did you satisfy yourselves  
that the results of both cases were valid, but that  
you questioned the possible post mortem release of  
digoxin from the heart to the blood?

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A. We did the latter, but the  
former, the question of validity as far as I was  
concerned was still open.

Q. Well I was wondering under the





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circumstances, and maybe you can assist the Commission, do you have any notes made contemporaneously with the event of that meeting with Dr. Ellis?

A. Yes.

Q. Would you produce them please.

A. They are available.

Q. Can we have them?

MS. CHOWN: Mr. Commissioner, I have a file containing some of Dr. Mancer's material on this, may I give it to him?

THE COMMISSIONER: Yes.

MS. CHOWN: If this contains what he refers to he can produce it.

THE COMMISSIONER: Yes.

MR. ROLAND: As I understand it as well, Mr. Commissioner, all of this was turned over to Mr. Percival's client, the Police, during the course of the investigation. I think they in turn provided it to Mr. Lamek and we have shown to Mr. Lamek and it seems to me to be the same.

MR. PERCIVAL: All I asked, Mr. Commissioner, was, may he have it for the purpose of refreshing his recollection.

THE COMMISSIONER: That is right.

MR. PERCIVAL: Did I say anything other







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than that?

THE COMMISSIONER: I don't think you  
did, it's just that I think it was ---

MR. PERCIVAL: A subtle innuendo?

THE COMMISSIONER: It has nothing  
to do with you, I think Mr. Roland was afraid I had  
a devious mind, that was all.

MR. PERCIVAL: I think probably I  
have been called scandalous, I have been called  
sniping, I don't know, you may add to that, Mr.  
Commissioner.

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MR. ROLAND: I didn't use any  
pejorative remarks at this time.

MR. PERCIVAL: I always love that word  
but I can never understand what it means.

Q. Dr. Mancer, could you assist me,  
having reviewed the Estrella chart and the Pacsai  
autopsy reports, does your notes say this:

"Reviewed data and satisfied ourselves  
that results of both cases were valid  
but question possible post mortem  
release of dig. from heart to blood."?

A. Yes, that's in my notes.

Q. All right. Do I take it those  
were made contemporaneously with the event?

A. Yes.

Q. Does that refresh your recollection?

A. Well, that is certainly more  
valid than my recollection.

Q. Thank you, sir.

MR. OLAH: Excuse me, sir. Could we  
have that marked as an exhibit, please, and perhaps  
get copies?

THE COMMISSIONER: Well, yes.  
Ordinarily - well, I would have thought - what do you  
say, Mr. Percival?





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MR. PERCIVAL: I don't think it is  
necessary, Mr. Commissioner.

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THE COMMISSIONER: Well, I don't think  
it is necessary either. It has been put in in a  
question form: 'was this there, is that your answer?'  
The notes themselves don't really become evidence. I  
don't know why I all of a sudden get worried about  
the laws of evidence.

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MR. OLAH: Well, I don't understand  
why it is that we have put in all of the notes up to  
this juncture as exhibits. I don't have any strong  
preference so long as I get a copy.

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THE COMMISSIONER: Well, if you feel  
very strongly about it you can do it when it's your  
turn.

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MR. OLAH: If I may then simply ask  
someone to produce a copy over the lunch hour I would  
be grateful.

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THE COMMISSIONER: Yes, all right.

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MR. PERCIVAL: Q. Now, in any event,  
following that meeting with Dr. Ellis and having come  
to the mutual satisfaction as you have expressed ---

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THE COMMISSIONER: Now, Mr. Olah  
interrupted me just as I was making this important  
note. What was the question, the release of digoxin?

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MR. PERCIVAL: "Reviewed data and satisfied ourselves that results of both cases were valid - but question possible post mortem release of digoxin from heart to blood."

Q. Dr. Mancer, to bring that back into perspective, is that what you alluded to yesterday as to the discussion you had with Dr. Ellis?

A. Yes.

Q. All right. Now, you talked in terms of discussing this matter by telephone with Dr. Tepperman. Again, do your notes refresh your recollection as to what was said in the five to ten-minute call that you had with Dr. Tepperman in relation to the information that you were conveying to him?

A. Yes. I told him about the previous case that was similar to Pacsai that he was already working on, the previous case being Estrella. I told him the above, this information about what was in the chart.

Q. What, so far as the question of the chart in Estrella that there seemed to be a page missing and some unusual things in the chart with respect to digoxin administration?

A. Yes.







G.4

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Q. You told him that?

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A. Yes.

4

Q. Yes.

5

A. And I told him that the patient

6

came from the same ward, had the same doctor, and I  
told him about the reservation about the post mortem  
release of dogixon from the heart.

8

Q. All right. Did either you or he  
speculate as to the cause of these abnormal findings?

9

10

A. Yes.

11

Q. What did you speculate about and  
what did he speculate about?

12

13

A. Well, I speculated about a  
therapeutic error.

14

15

Q. What is a therapeutic error,

Dr. Mancer, I don't understand what you mean?

16

A. Someone miscalculating and giving  
too much drug.

17

18

Q. All right.

19

A. Or ... Well, I suppose that  
covers it.

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Q. Because by that time you had  
the discussion with Dr. Ellis and he had convinced you  
that there was certainly no laboratory testing error,  
isn't that true?

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A. Well, according to my notes he convinced me but I'm not sure. I'm still not sure it is entirely a valid thing to have said at the time, or thought at the time.

Q. In any event, what you were speculating about was, there was no question in your mind, at least at the time you talked to Dr. Tepperman, that there had been digoxin overdoses with respect to these two babies. How it occurred was something that you talked about, a therapeutic error?

A. I'm not so sure that I was convinced that they were overdoses. All I was really doing as far as I was concerned was carrying out my duty in reporting a case that needed investigation in my opinion.

Q. Well, again, would you take a look at your notes?

A. In what?

Q. Well, did Dr. Tepperman speculate what the reason was or did you speculate what the reason was, according to your notes?

A. Yes. Well, he said it sounds like there is a psychotic loose in the ward and I said or somebody that can't multiply properly.

Q. So, Dr. Tepperman was saying





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that there may be a psychotic, and is that what you mean by something sinister going on at the Hospital?

A. Yes.

Q. All right. And your response, or what you were saying was, or somebody that can't multiply properly?

A. Right.

Q. So, do I take it from the words "or somebody that can't multiply properly", you were at least prepared to accept the suggestion, or consider the suggestion that there was a psychotic loose in the ward or, alternatively, that somebody couldn't multiply properly in giving the digoxin to these babies?

A. Yes.

Q. All right. Now, Dr. Ellis was present at the time of that phone call?

A. I'm quite sure he was still there.

Q. Well, did you discuss it further with Dr. Ellis after you got off the phone from Dr. Tepperman?

A. I think I gave him instructions on what to do with the chart. I believe Dr. Tepperman and I talked about where the chart would be when he came to the Hospital.





G.7

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Q All right.

3

A I don't think I talked to him

4

any more than that.

5

Q Well then, do I take it then

6

that at least when you left Dr. Ellis that afternoon

7

you anticipated Dr. Tepperman to be there for the

8

purposes of reviewing the Estrella chart?

9

A Yes.

10

Q All right. Now, you went home

that evening?

11

A Eventually.

12

Q Yes. Well, anything else develop

13

with respect to what we're dealing with today?

14

A No.

15

Q That evening?

16

A No.

17

Q Did you work on the weekend of

March 21st and 22nd?

18

A No.

19

Q That's the Saturday and the

Sunday?

20

A Well, I was not on duty at the

21

Hospital.

22

Q All right. Well, during that

23

weekend did you hear anything about the deaths of

24

Baby Miller or Baby Cook from any source?

25







G.8

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A. No.

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A. That's right.

8

9

Q. All right. Did you come in first thing Monday morning or did you go somewhere else?

10

A. I had an inquest.

11

12

13

Q. All right. And I take it if there was a Monday morning meeting that morning in the Hospital with the coroner and the police, you did not attend?

14

A. That's correct.

15

16

Q. And you returned to the Hospital at what time, sir?

17

18

A. I can't recall. I'd better look at my notes. Noon.

19

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21

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Q. Did you speak to anyone that afternoon with reference to these matters? For instance, were you advised that afternoon of the elevated postmortem digoxin levels for either Baby Cook or Baby Miller?

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A. I don't believe I had any





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involvement until the next morning in regards to that. I just have a note saying here that I did my work for the rest of the day.

Q. Well, what concerns me that above that very note that you did the work for the rest of the day there is reference in your notes to Miller and Cook on March 21st and 22nd, "Both digoxin overdose, Cook not even being treated with digoxin". So, you must have known at that point, sir?

A. Yes, but these notes were written in retrospect. No, I don't think I knew about that until after I got back from - well, these notes were actually written after that meeting of the 24th.

Q. All right. Well, what I want to know is, did you know on March 23rd, after you came back from the inquest and worked at the Hospital that afternoon, about Baby Cook and Baby Miller having apparently elevated digoxin levels on the weekend that you had been off work?

A. I don't know whether I was informed of it that afternoon or through discussions with Dr. Cutz or not.

Q. Dr. Taylor did both of those post mortems, is that correct?

A. That's right.





G.10

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Q Well, did you talk to him that  
afternoon?

4

A I don't recall.

5

6

Q You can't recall whether you  
talked to Dr. Cutz?

7

A I don't recall.

8

Q All right. Then the next morning  
on March 24th you were required to attend a meeting?

9

A That's right.

10

11

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13

14

Q And before you made a note in  
relation to that, there is a discussion that you had  
permission beforehand by phone to co-operate with the  
meeting by Dr. King who told you the call on these  
cases would be coroner's cases?

15

A Yes.

16

Q What does that refer to, what  
cases?

17

MR. ROLAND: Well, I think that reads  
"told me all these cases ...".

18

19

MR. PERCIVAL: " ... were coroner's  
cases".

20

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MR. ROLAND: Yes, not call.

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MR. PERCIVAL: All right.

23

Q All right?

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A Yes.

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G.11

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Q Well, do I take it Dr. King then advised you, a coroner advised you in the afternoon of March 23rd that there was two others?

A Well, no, that isn't it. I was asked to come to this meeting suddenly by Dr. Cutz who had been at the meeting.

Q On the 23rd, the Monday?

A He was already at the meeting and I wasn't there.

Q Oh, all right.

A He came back and he said there is some information they need from you at this meeting.

Q All right.

A And I didn't even know who 'they' were.

Q I see.

A I knew that the Pacsai and the Estrella cases were coroner's cases.

Q Yes.

A Well, we need permission from the coroner's office before we can talk about coroner's cases with other people, other than the coroners. So, I phoned the coroner's office to speak to Dr. Bennett or Dr. King.

Q All right.







G.12

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A. And I got Dr. King and he was  
aware of the meeting.

4

Q. So, do I take it ---

5

A. And he just told me yes, go ahead.

6

Q. So, when you arrived at the  
meeting, do I take it that as far as you were concerned  
you were going to a meeting to discuss Estrella and  
Pacsai?

9

A. Yes.

10

Q. And you didn't even know anything  
about Miller or Cook?

11

12

A. I'm not sure that I did or not.

13

Q. All right. In any event, at that  
meeting your notes of that meeting said, and I want  
to refresh your recollection because on this  
contamination bit the quotation at least from your  
personal notes made at the time was:

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16

17

"I was asked initially about  
contamination by the ascitic fluid and  
stated that this would tend to lower  
the result by dilution."

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19

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A. Yes.

21

Q. And is that your recollection  
of what the question was and what your response was?

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A. Yes.

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G.13

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Q. So, do I take it that somebody brought up contamination and your reply was, well, if it was contaminated by ascitic fluid it would result in a higher reading than if there had been no contamination?

A. That would be my interpretation.

Q. Thank you. And if the police officers were there I gather they heard you?

A. I would think so.

Q. All right. Did you then tell the group that you had gone over your results with Dr. Ellis and both of you were convinced that it was not a laboratory error?

A. I will have to check my notes for that.

Q. Please do.

A. Yes.

Q. Thank you. At that meeting you may have been first made aware of the Miller and Cook digoxin overdoses. Do I take it that you knew as a result of attending that meeting on March 24th that a deliberate digoxin overdose by persons or persons unknown of at least four babies were being very serious considered?

A. Yes.





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Q. You also knew at that meeting that a large bolus intravenous injection was - at least, the consensus of the meeting was the likely method of administration?

A. I will have to check my notes for that.

Q. Please do.

A. It sounds reasonable.

Q. I think you gave that evidence yesterday. I was merely paraphrasing it. Maybe you didn't. Do you recall talking about that yesterday, Mr. Scott was questioning you.

A. Yes.

Q. Do you remember that evidence?

A. Yes.

Q. That was discussed at that meeting?

A. I can't recall. I can't seem to find it in the notes.

Q. Whether it was in the notes, did you give evidence yesterday to that effect?

A. Pardon me? Well, that was my thoughts about if it were an intentional, or if it were an intentional or therapeutic error how such an extremely high level might be achieved in blood





G.15

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without the patient having died long before such a level could be achieved.

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Q. I understand, all right. In any event, I gather that that whole meeting on Tuesday, March 24th, was pervaded by an atmosphere that there was something very sinister that had gone on in the Hospital, at least so far as these four babies were concerned?

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A. Yes.

Q. I want to capture from you what you felt after you left the meeting on March 24th?

A. Yes.

Q. I want to deal now with Exhibits 197 and 198 because a few minutes ago you left the impression at least with me and perhaps with the Commissioner that at the meeting of March 24th you came into possession of a list of cases.

A. Well, that's my best reconstruction at this point.

Q. You're not suggesting that the list of cases that you came away from the meeting with was Exhibit 197 because you have already testified under oath that you only found that two weeks ago in Dr. Phillips' file?

A. That doesn't necessarily mean







G.16

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that it wasn't the list we were working from.

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Q. Well, show me what you have in your file. Where is the list that you say you came away from the meeting with.

5

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A. I don't have it in my file. I didn't have it in my file.

7

8

Q. Have you ever had it in your file?

9

A. As far as I know I haven't.

10

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Q. All right. Well, do I take it that in relation to this 197, the document which has been produced, seems to be a photostat of a photostat. Can you assist me in relation to this particular document that came before the Commission, I think Miss Cronk put it in, you say came from Dr. Phillips' files some two weeks ago?

16

17

A. Well, that's where we got our recent copy of it.

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19

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Q. Well, no. I just want to know where this document came from, you will forgive me, isn't that your evidence you gave back on - a cross-reference is pages 8147 to 8156 of yesterday's evidence, Mr. Commissioner.

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Dr. Mancer, did you not say yesterday that two weeks ago you were reviewing the matter and you came across this document in Dr. Phillips' file?





G.17

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A. Yes.

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Q. Thank you. In any event, is that the first time you saw the list was two weeks ago, this particular document?

5

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A. Well, I don't believe that would be the case at all.

7

8

9

Q. Well, I gather then this particular document was somewhere else. When did you first see this particular document?

10

11

12

A. Well, I can't remember but obviously I had to have a document - when Dr. Cutz and I made this table up we had to have something to work from, a list.

13

14

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THE COMMISSIONER: It could have been otherwise - I think you've said that this is your printing, is it, of this 198. Is that your printing?

16

17

THE WITNESS: Well, my printing is at the top.

18

19

THE COMMISSIONER: What about the printing at the side?

20

21

22

THE WITNESS: Yes, the body of the document is Dr. Cutz' printing. But that was merely done because the thing wouldn't Xerox properly, it was in pencil.

23

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MR. PERCIVAL: Q. Well, let me do it





G.18

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this way. Are you able to assist the Commissioner at this point whether 197 came into effect before 198 or vice-versa?

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A. Well, I'm certain that 197 came into existence before 198.

7

8

Q. Well, tell me how you can be so certain if you didn't see it until two weeks ago?

9

10

A. Well, I can't remember when I saw it or if I saw it but we had to have something. I couldn't have just generated this list from ...

11

12

Q. Well, that's what I'm trying to find out, Doctor. You will assist me.

13

14

15

A. So, we went through Dr. Phillips' files and we found this list among other lists that were turned over to Dr. Phillips when he got back from vacation.

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Q. Well, let's deal first of all with 197. I mean, I can hardly read the document that you have produced. Between the words Estrella, Janice, there seems to be something else and it looks like it is a photostat of a photostat, and it is a photostat of a large document; to me it does anyways. Do you agree with me on that?

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23

24

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A. Yes.

Q. All right. Well, what are the





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initials, for instance, Jordan Hines, what are the

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initials between Jordan Hines and March 8th, '81.

4

Whose handwriting is that?

5

A. Well, when Dr. Phillips and Cutz

6

and myself had a meeting to try and find out how we

7

generated this list we saw the file that was in

8

Dr. Phillips' possession, and we looked at this

9

column that you refer to with those initials and

10

those are in Dr. Cutz' handwriting and they refer to

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the person who did the autopsy, the person who

12

supervised.

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MR. PERCIVAL:

H: 2 So all of those - do you have the  
DP: 3 original document -- is that the original document,  
yk 4 Mr. Roland? Exhibit 197 that has been marked as  
5 an exhibit, is that the original document that came  
6 from Dr. Phillips' file. If it is, I gather that the  
7 initials cannot be photostated as well. Do you have  
8 the original?

MR. ROLAND: As far as I know, that  
9 did come out of Dr. Phillips file. I will see if I  
10 can find a better one, but --

11 Q. But if the initials are put on  
12 a document after it is photostated, the exhibit before  
13 you shows that the initials are photostated?

14 A. Yes.

MR. PERCIVAL: Perhaps Mr. Roland  
15 can, because it may be of some assistance.

16 Q. What I wanted to get at is  
17 this, then, do you recall speaking to the police  
18 officers on March 24 at that meeting?

19 MR. BROWN: Mr. Commissioner, we  
20 have gone pretty far afield on these exhibits. It  
21 was my understanding that they were produced by Mr.  
22 Lamek on when the cause of death of some of the  
23 children, particularly when Baby Hines, was brought up.  
24 That was my understanding. I believe they have been  
25





1  
H2 2 used to question the pathologist on what they believed  
3 to be the cause of death of these children and that  
4 is properly part of Part 1.

5 Now we are really getting into Part  
6 2, if he is going to start relating the conversations  
7 he had with the police. I believe both Dr. Becker  
8 and Dr. Mancer have given us an idea of what these  
9 documents were for, the information they used, and  
the results that they concluded.

10 I would submit that starting to  
11 relate the conversations they had with the police  
12 at this date, March 24th, which is after the police  
13 investigation had started, is not properly the subject  
14 matter of this part of the inquiry, in view of the  
15 testimony that they have already given as to the  
16 information which they used in formulating these  
17 conclusions which were of assistance to them in  
determining the cause of death.

18 If Mr. Percival intends to proceed  
19 along this line, we are in the dark as to those  
20 conversations and I would therefore request any and  
21 all statements that he has with respect to those  
22 conversations, so that we can review them. It is  
the same problem that Mr. Sopinka addressed before.

23 THE COMMISSIONER: It is not quite  
24  
25





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H 3 2 the same problem, because I think what Mr. Sopinka  
3 was concerned about was the prejudice.

4 MR. PERCIVAL: Mr. Commissioner,  
5 may I assist you. This evidence was put in by Miss  
6 Cronk in Volume 38, page 7691, on the direct examination  
7 of Dr. Becker.

8 THE COMMISSIONER: How deeply are  
9 you going to go --

10 MR. PERCIVAL: Not very deeply, I  
11 just want to know what has been left by Mr. Scott  
12 yesterday, in particular, may I tell you, Mr.  
13 Commissioner, was the impression that there was a list  
14 of suspects drawn up by the police and given to  
15 Dr. Mancer and then he carried it on. With respect --

16 THE COMMISSIONER: A list of  
17 victims.

18 MR. PERCIVAL: Well, you and he  
19 had a little discussion. He talked about suspects.

20 THE COMMISSIONER: I know he talked  
21 about suspects, but he could not possibly have meant  
22 it.

23 MR. PERCIVAL: I would have thought  
24 not. I do not think they probably had the mens rea.

25 THE COMMISSIONER: That, we don't  
know, but I don't think -- In any event, there is no







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question that this is relevant to the second stage.  
How relevant it is to the first stage, I am having  
some trouble with.

MR. PERCIVAL: I did not put it  
in, Mr. Commissioner. Your counsel did, with  
respect, on the examination of Dr. Becker and said,  
"subject to further proof", and I am just trying to  
find out where the proof is.

THE COMMISSIONER: Okay. If that  
is the purpose, we want to know where it came from,  
and we are not getting very far with the witness at  
the moment on that subject, but we can pursue it.

Now, Mr. Lamek, you were up first,  
I think.

MR. LAMEK: I was about to make  
a suggestion in aid of my friend, Mr. Commissioner,  
but I am not sure anymore.

He is entirely right, Commission  
Counsel put this document in originally. It was put  
to Dr. Becker, and I referred to it yesterday in my  
examination of Dr. Mancer. But, in each case, I  
think Miss Cronk and I were scrupulous to avoid any  
evidence as the circumstances, the discussion at the  
meetings, the conversations with police officers,  
because Mr. Brown is entirely right, this goes to







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Phase 2.

My only concern, Mr. Commissioner, is that Mr. Scott, yesterday, either inadvertently or intentionally, opened up this matter of discussion between police officers and Dr. Mancer and, although it is of dubious relevance, I think, to Phase I, I don't know how the Hospital, having opened it up, Mr. Percival can be precluded from pursuing it a little.

THE COMMISSIONER: He has pursued it a little. I am hoping that he won't pursue it much more.

Before I deal with it, Mr. Roland, did you have something to say?

MR. ROLAND: I, unfortunately, was not here yesterday when Mr. Scott opened it up, but I support Mr. Brown, in principle at least, that this is part of Phase 2 and is not appropriate for this phase.

If Mr. Scott has given Mr. Percival a crack in the door, I do not think he should be permitted to look through the door any further than that crack.

MR. BROWN: Quite right, Mr. Scott did open the crack a bit but, yesterday, it was a very





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particular matter, and that was whether or not there was a discussion at that meeting of whether the Estrella sample was contaminated.

I understand Mr. Percival has already addressed that matter, has asked the question of the witness and has his answer.

So, the door was opened; I think he has gone through it as far as he can, and I respectfully submit it should be closed.

THE COMMISSIONER: If your object was to ensure that this document is not being put forward as one received from the police, I think you have succeeded.

MR. PERCIVAL: That is all, Mr. Commissioner, as I said. It slipped in a few moments ago, "I received a list", and nobody said anything about it. It seemed to drift throughout this room.

THE COMMISSIONER: I am certainly satisfied that it is not proven to have come from your files.

MR. PERCIVAL: Thank you.

Q. In any event, carrying on with the cause of death, which is part of Phase 1, Dr. Mancer, if you were given a list, whatever it was, were you not asked by the police to complete the





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post mortems?

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A. I believe that is what

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we were asked.

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Q. And that was the extent

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of their request, was it not, to complete the post  
mortems and the signouts?

7

A. As far as I can recall.

8

Q. Do I take it then that,

9

when you and Dr. Kutz decided to prepare Exhibit 198  
for the next morning, quite apart from completing  
the signouts and the post mortems, you decided, for  
your own purposes, to go one step further?

10

11

12

A. Not for our own purposes.

13

14

We thought that the meeting of the next day would  
take the same form as the meeting of the Tuesday, and  
we thought it would be helpful, for purposes of  
discussion of the type that were going on on Tuesday,  
if as much data in simplified form -- if we could  
carry it as far as we could on a table.

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Q. It will assist me, because

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if you wrote the top things, the terrible photostat  
that I have, I do not even know what the other four  
columns are on the right-hand side.

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What is after the words "cause of

23

death"? Something is "available", and I am not sure

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what that is. Do you not have the original?

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A. I might have a better  
copy in my file.

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Yes. I can read it on the better  
copy.

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MR. PERCIVAL: If it is a better copy,  
may we have it interchanged, Mr. Commissioner?

8

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THE COMMISSIONER: Yes, there is  
no reason -- Have you the original of 198?

10

11

MR. PERCIVAL: The original is  
before the witness, Mr. Commissioner. It is not much  
better but, in any event, perhaps we can switch it.

12

13

Q. Perhaps you can read, for  
the purposes of the Commission and counsel present in the  
room, what are the other four columns that seem  
illegible, at least on the copy that I have.

14

15

16

17

A. The column following  
"cause of death" reads: "Heart available",

18

19

Q. That is a specimen of the  
heart of the child in question?

20

21

22

23

24

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A. Yes.

Q. Is there anything below  
that? There seems to be, at least in the photostat  
I have got - I don't know whether it is dots or  
crosses; whatever. Is there anything below that?







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A. Yes. In the three cases where there was no autopsy, it says, very faintly, "no" in each case.

Q. That is on Fazio, Gionas and Manojlovich?

A. Yes.

Q. So, do I take it that those three, they were not available, but the other eight or nine were?

A. It does not say "yes", but I assume that they were available.

Q. What is the next column?

A. It says, "blood, pre mortem available".

Q. "Blood, pre mortem available". Again, is there anything in that column?

A. Nothing.

Q. Do I take it that that was something that you prepared? That is in your handwriting?

A. Yes.

Q. Was that something that you felt might be of some assistance to the meeting the following morning?

A. Yes.





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Q. Then, the second-last  
column --

A. Is "post mortem blood...".

Q. "Post mortem blood  
available", is that what it says?

A. Yes, and it relates to  
the result. The cases where there are plusses in  
the column are the cases where post mortem blood  
was taken and, in the first three; that is, Estrella,  
Pacsai and Miller, the digoxin level had already been  
completed.

Q. Do I take it, at least  
in your mind, on the evening of March 24th and March  
25th, you did not know what the digoxin post mortem  
level was for Baby Cook?

A. That is right.

Q. Or it was not available to  
you?

A. That is right.

Q. Then, do I take it that,  
in relation to the question of cause of death, this  
Exhibit 198 was prepared as a joint collaboration by  
you and Dr. Kutz overnight on March 24 and the morning  
of March 25 and represented a joint conclusion?

A. That is correct.





H11 1  
2 Q. And the joint conclusion  
3 that you had reached in that time sphere, insofar as  
4 four babies were concerned - Estrella, Pacsai, Miller  
5 and Cook - that the cause of death which you felt  
6 was reasonable at that time was a digoxin overdose?  
7 A. That is correct.  
8 Q. And at least for two  
9 others - Babies Hines and Inwood - that their deaths  
10 might have been caused by digoxin overdose?  
11 A. That is correct.  
12 Q. And you felt that that was  
13 a reasonable conclusion at that time, based upon the  
14 clinical evidence that you had before you - the  
15 medical records?  
16 A. I think that we believed  
17 that it could not be ruled out, and that is why we put  
18 "undetermined".  
19 Q. The pathological evidence  
20 that you had before you - is that right?  
21 A. Yes.  
22 Q. The digoxin test results  
23 that you had?  
24 A. Yes.  
25 Q. I'm trying to find out the  
basis on which you formed those conclusions, that is





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all, doctor.

A. Yes.

Q. You had clinical evidence, pathological evidence, digoxin test results?

A. Yes.

Q. You had the circumstances of death, did you not, because you had the medical records?

A. I do not think that we actually went over the medical records, no.

Q. But you did have, at that particular point, on the evening of March 24 and the morning of March 25, this milieu or atmosphere then prevailing in the Hospital of something sinister going on so far as digoxin overdosage was concerned?

A. Yes.

Q. And when you arrived on the morning of March 25, there were no police officers present?

A. That is correct.

Q. That really did not surprise you because you had known from the meeting before, the following day, of the intentions of the police officers?

A. No, we were surprised that







H13 1  
2 the police officers were not there, and the Coroner.  
3 I really thought that the same people would be there  
4 as were there the day before.

5 THE COMMISSIONER: You were  
6 surprised that the Coroner was not there, did you say?

7 THE WITNESS: I was surprised  
8 that the same group of people were not there.

9 MR. PERCIVAL: Q. All right,  
10 let us look back in your notes, then.

11 On March 24, under the terminology  
12 "following the meeting of March 24, 1981, general  
13 information communicated by them" --

14 MR. BROWN: Who communicated this  
15 information?

16 MR. PERCIVAL: I do not know. It  
17 is his note. I am going to ask him that.

18 THE COMMISSIONER: At the moment,  
19 all that is being done is the notes are being put to  
20 the witness. He will have to explain them.

21 MR. PERCIVAL: Mr. Commissioner, he  
22 said that he did not know what was going on. I am just  
23 reminding him of his notes; that is all.

24 MR. BROWN: Would it be possible  
25 at this point that I have a copy of those notes?

THE COMMISSIONER: Well, if this





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were a trial, it would never become evidence, that anyone cross-examining would have a perfect right to look at them to determine whether they were in accord with the evidence and perhaps to make them an exhibit if they were not.

As I say, it is a little late, after 200 and some odd exhibits, most of which would not have been received at a trial, to complain about it.

We can put them in, but I am not going to force anybody to put them in.

MR. PERCIVAL: Mr. Commissioner, maybe I will put my friend at ease. If I put the question, I think I will get the answer,

THE COMMISSIONER: Yes. All right.

MR. PERCIVAL: Q. Did you know, after the meeting of March 24 and at the time you were preparing the list, that the police officers were going to be doing something about interviewing Hospital personnel, Hospital suspects? Without mentioning names, Dr. Mancer; please, don't get into that.

A. The general information was communicated that, over the next 24 hours, the detectives would have a chance to interview suspects.





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Q. Do I take it then -- the next morning, when they were not there, did you get the impression that probably that is what they were doing?

A. No. I was simply surprised that the same people all were not there.

Q. I see.

A. Really, this list was drawn up for the benefit of the Coroner, the police, and to give input from the medical people that --

Q. Input from you and Dr. Kutz, at least, on the list.

A. There were a lot of people with expertise and knowledge of what goes on in Ward 4A that were at the meeting of the 24th and I thought that all these people could give input, if asked.

Q. I gather they did give the input at the meeting of March 24th and you prepared Exhibit 198, in conjunction with Dr. Kutz, to give more input at the proposed meeting for March 25?

A. Yes.

MR. PERCIVAL: May we, before I finish, have that marked in substitution?

THE COMMISSIONER: Yes, that will be the new 198. I do not think we need to make copies







H16

1  
2 of that because I hope everyone corrected the other  
3 one.

4 --- EXHIBIT NO. 198: List of Children Autopsy  
Date - Cause of Death -  
5 (substitute copy).

6 MR. PERCIVAL: No further questions,  
Mr. Commissioner.

7 THE COMMISSIONER: All right.  
8 Thank you.

9 I guess, Ms. Symes.  
10 Would you like to wait until  
11 after lunch?

12 MS. SYMES: Yes.  
13 Perhaps I could ask one question  
to start off Dr. Mancer.

14 THE COMMISSIONER: By all means.

15 MS. SYMES: Because it probably  
16 will involve the doctor looking at the Estrella chart.

17 CROSS-EXAMINATION BY MS. SYMES:

18 Q. Dr. Mancer, you said in  
19 answer to a question put by Mr. Percival to you that,  
20 on March 20, in Dr. Ellis' office, you looked at  
21 Estrella's chart and you looked for when the digoxin  
22 was last given and you said two things. First of all,  
23 that it seemed to you some pages were missing; that is,  
24 a drug administration sheet was missing, and that there  
25







H17

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2 were some changes in the reported administration; that  
3 is, something had been circled and monitored in red.

4 Because my copy of the Estrella  
5 chart is so badly out of order with respect to the  
6 drug administration chart, which, I believe, began  
7 on page 48, but mine is not in sequence, could you,  
8 please, over the lunch hour, look at the chart and  
9 tell me what you meant by that to Mr. Percival.

10 What exactly did you determine  
11 was missing and what did you determine had been  
12 changed?

13 A. I can give you --

14 THE COMMISSIONER: Can you give it  
15 to us right now?

16 THE WITNESS: From the notes that  
17 I have here, I am not sure that I will be able to  
18 identify what page; the page may have come back, in  
19 other words; but what I found at the time is the  
20 page covering the last three days of the Nurse Treat-  
21 ment Record seemed to be missing and there was an  
22 unsigned, undated change in the digoxin dosage to  
23 one-tenth of what was originally entered in the chart  
24 and there were lots of "hold" orders for digoxin and  
25 there were not many orders for digoxin levels.

That is the information that I





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Q. I believe this child died  
on the 10th of the first, 1981; I'm sorry, the  
11th. Do you have page 52?

A. Yes, I do.

Q. Does it start at the top  
upper, 5/1, 6/1, 7/1, 8/1, 9/1?

A. Yes.

Q. On your copy as well?

A. Yes.

Q. Was that copy, that page in  
the chart when you looked at it?

A. I really don't know.

Q. Is that the type of page that  
you thought was missing; that is the Drug Admini-  
stration - Medication and Treatment Program?

A. Yes.

Q. That is the type of page you  
thought was missing?

A. Yes.

Q. Well, would you agree with  
me that it clearly is in our exhibit, on page 52 for  
the 5, 6, 7, 8 and 9?

A. Yes.

Q. And would you turn the page  
to page 53, I guess it is there in anticipation for





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I2 2 10, 11, 12, 13 and 14?  
3 A. Yes.  
4 Q. And would you turn to page 49  
5 please Dr. Mancer. At the bottom of the page is  
6 there 1/1, 2/1, 3/1, 4/1, 5/1?  
7 A. Yes.  
8 Q. Above it, it is there for  
9 December 27th, December 28th, December 29th,  
10 December 30th, December 31st?  
11 A. Yes.  
12 Q. Have I just accounted then for  
13 the Drug Administration Record from December 27th  
14 through to and inclusive to the date of death?  
15 A. Yes.  
16 Q. What page was not, to your  
17 recollection, what of those pages was not to your  
18 recollection there when you met in Dr. Ellis' office  
19 on Friday afternoon?  
20 A. I really can't remember  
21 after all this time. I may have been in error at  
22 that time too, in reading this part of the chart.  
23 Q. Since ours is so badly out  
24 of sequence, is it possible that the one that you  
25 looked at was also out of sequence?  
A. It is possible.  
Q. Specifically page 50 is out





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of sequence, is it, and 51? Might that have confused you on Friday afternoon, not Friday afternoon, but March 20th, 1981?

A. It is possible. You see I didn't have very much time to review that chart before Dr. Tepperman returned the call, and that was my impression that there was a page missing.

Q. Just to follow then on the second page; you agree there is nothing missing in the chart now?

A. There doesn't seem to be.

Q. And specifically you said that there had been some changes to the digoxin dosage, that would be the second column on those particular types of pages, Medication and Treatment Records?

A. That would be page 50.

Q. Well, yes, there is one, isn't it on page 50 and there is another one on page 51, is that correct?

A. Another what on page 51?

Q. Another change Dr. Manger. On page 50 there is a change, the decimal point changed?

A. Yes, that is correct.

Q. And on page 51 there is a decimal







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I4 2 point changed as well, isn't there?  
3 A. Yes.  
4 Q. Now the doctor's order for  
5 the second one, 16/12 on page 51 I believe is found  
6 on page 185. Dr. Mancer do you have page 185?  
7 A. Yes.  
8 Q. I will try to direct you where  
9 on the page; it is approximately half-way down and  
10 it says:  
11 "Digoxin 0.015."  
12 THE COMMISSIONER: I am a little  
13 troubled with that because - oh, wait a minute.  
14 THE WITNESS: I can see where it says  
15 that, yes.  
16 Q. You are with me then?  
17 A. Yes.  
18 Q. The proper transcription of  
19 that doctor's order is, I gather once a doctor writes  
20 that order it is then transcribed on to the  
21 Medication and Treatment Record?  
22 A. Yes.  
23 Q. And then as it is transcribed  
24 on page 51, is there an error then in transcribing,  
25 that is rather than transcribing 0.01 it is trans-  
cribed to .1, that is 0.1 ten times?





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I5 2 A. Yes, there is.  
3 Q. And that appears to be  
4 corrected above it?  
5 A. Yes.  
6 Q. And charted on the 20th is  
7 given as 0.01, on page 51?  
8 A. Yes.  
I2 8 Q. So that the error then between  
9 page 185, the doctor's order and the medication and  
10 the medication and nursing treatment is one of  
11 transcription, at least it appears on the face to be  
12 one of transcription?  
13 A. Yes.  
14 Q. Namely a transposition of the  
15 decimal place?  
16 A. That is right.  
17 Q. But that appears to have been  
18 picked up?  
19 A. Yes.  
20 Q. And the second thing is, on  
21 page 50, once again there appears to be a transcription  
22 problem where the decimal point has been moved?  
23 A. Yes.  
24 Q. In the second order?  
25 A. Yes.





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Q. The writing above it?

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A. Yes.

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Q. And in fact it is the second, that is the larger or bolder type that has been given by the nurse on the 14th and 15th of December?

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A. Yes, that is written above the nurse's name.

8

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Q. First of all Dr. Mancer, were those exactly as they are today in our exhibit, as they were in Dr. Ellis' office in March of 1981?

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A. These are the kind of things that I am referring to. I can't remember exactly, but I would ---

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Q. I am asking you other than the bold ink were the remaining inked portions, that is the actual dosages given also there on March 20th, 1981?

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A. As on page 51?

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Q. Page 50, let's just take page 50.

20

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A. I am sorry, I am not sure where you are now.

22

23

Q. Above the date 14/12 and 15/12 there is a nurse's signature and then some numbers written, that is 0.0175 mg. Do you see where I am

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reading, Dr. Mancer?

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A. I am not sure that I do,

4

maybe you can point it out to me.

5

Q. Immediately above the 14/12

6

the nurse's signature for the digoxin, there is, do  
you see now the writing 0.0175 mg?

7

A. Yes, I do.

8

Q. Dr. Mancer was that writing

9

also there on March the 20th, 1980?

10

A. Oh, I didn't go into that

11

degree of detail. I didn't notice that. All I

12

noticed were these changes. I wanted to draw Dr.

13

Tepperman's attention to some changes.

14

Q. Would you agree with me then

15

that the error, what appears to be an error in

16

transcription, has been picked up by the nurse who  
was administering the drug and corrected?

17

A. It appears to have been picked

18

up.

19

Q. So there is no indication, for

20

example on page 50, that the ten times dose was

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given in fact on the 14th or 15th of December?

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A. That is correct.

23

THE COMMISSIONER: Can you help me  
out Ms. Symes. You said something that this matter

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had been corrected on page 51. I see the correction to the medication and nursing treatments, I don't see the correction on the 20th, is there one there?

MS. SYMES: There is one, Mr. Commissioner on the 20th.

THE COMMISSIONER: Oh, I see, it is a tiny little thing, yes, that is right.

MS. SYMES: It is 0.01 mg.

THE COMMISSIONER: Yes, I am sorry I have got it now, thank you.

MS. SYMES: I believe there is an initial beside it.

THE COMMISSIONER: Yes, fine, thank you, I just didn't see it.

MS. SYMES: And we will have to prove that.

Q. Dr. Mancer, other than those two pages that I pointed out to you as transcription errors, could you please review the chart and see if there are any other changes that you notice on March the 20th that you referred to, or were referred to when you talked to Dr. Tepperman in your conversation on March 20th?

THE COMMISSIONER: Can we leave that, this is a form of homework doctor. I don't want you to





I9 1  
2 take too long at it, if you can't remember you can't  
3 remember, if you can readily just do that. Until  
4 2:30 then.

5 MR. LAMEK: Mr. Commissioner, just  
6 before we break in order to know whether Dr. Cutz  
7 may be required this afternoon. Can we again take  
8 a poll as to how long we might be?

9 THE COMMISSIONER: How long Ms.  
10 Symes?

11 MS. SYMES: I expect to be 15  
12 minutes or maybe 20 minutes.

13 THE COMMISSIONER: Yes. Mr. Olah?

14 MR. OLAH: I expect to be 15  
15 minutes Mr. Commissioner.

16 MR. LABOW: I expect to be 20  
17 minutes, Mr. Commissioner.

18 MR. SHINEHOFT: 15 minutes Mr.  
19 Commissioner.

20 MR. SHANAHAN: About 5 or 10 minutes  
21 Mr. Commissioner.

22 MR. LAMEK: About an hour-and-a-  
23 quarter.

24 THE COMMISSIONER: Yes, we will  
25 probably not. As a matter of fact I think we had  
better make it 20 minutes to three that we come back.





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MR. LAMEK: Might I then alert Dr.  
Cutz for tomorrow morning rather than this afternoon?

THE COMMISSIONER: I think that  
would be sensible.

MS. SYMES: I am sorry Mr.  
Commissioner, we are not coming back until twenty to  
three?

THE COMMISSIONER: Yes I think  
twenty to three so we will have an hour and a half.

--- Luncheon Adjournment.

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---On resuming.

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THE COMMISSIONER: Yes, Mr. Brown.

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MR. BROWN: Mr. Commissioner, with  
respect to the date.

5

THE COMMISSIONER: Yes.

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MR. BROWN: I would just like to  
confirm next Tuesday at 4:30. I believe it is  
acceptable to both Mr. Percival and Sopinka and  
subject to your availability.

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THE COMMISSIONER: Well, now, I am  
always available for that sort of entertainment.  
4:30 on Tuesday then. That will be 4:30 on Tuesday  
the 4th of October.

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Yes, all right, thank you. Yes,  
Miss Symes.

15

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MS. SYMES: Thank you, Mr. Commissioner.

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Q. Dr. Mancer then going back to  
the question about whether or not there was anything  
missing from the medication and treatment record  
of patient Estrella when you looked at her chart  
on Friday, March 20th at some 3:30 p.m. or after in  
the afternoon.

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Now, I think before the break, before  
the luncheon break we went through from pages 48 on,  
which were the medication and treatment record.

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You will agree with me that there is a complete sequence of medication and treatment records present in the chart, Exhibit 91?

A. Well, I'm not sure of that because on page 52, like, 52 is a page that has a lot of drugs listed and page 53 has a very small number. What I was probably referring to is that digoxin doesn't appear on page 53. I would wonder whether there was another page that would have included a lot of the drugs that are on page 52 plus what is on page 53 as orders. That is probably where I got the idea that maybe there was a page missing.

Q. But, Dr. Mancer, going back to page 52 do you see that there is a hold digoxin on the 7th of the one?

A. Yes.

Q. So, if there was an order for hold digoxin on the 7th of the one, unless there is a doctor's order to reinstitute it, it wouldn't appear logically, would it, on page 53?

A. Well, I wouldn't have known that, really. Like, hold to me would mean, although the order has been given, that particular dosage that should have been given at that time is held. That's the way I would interpret it and that's





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probably what I was thinking of at the time.

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Q. But if the order was to hold digoxin with no date attached to it, if a doctor writes an order to hold digoxin, doesn't that mean to hold it until further instructions?

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A. Well, it's been quite a while since I was involved in therapeutics and it could imply either, hold that particular dose or continue. But that's my interpretation.

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Q. Well, let's just try and see

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what is logical because on page 199 of that same chart, it is the doctor's order sheet, at the bottom of the page, the 7th of the one, '81, do you agree with me that there is a clear instruction for, first of all, to do digoxin levels and secondly to hold digoxin and ampicillin?

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A. Yes.

17

Q. And that's signed by physician

Paul Runge?

18

19

A. Right.

20

Q. All right. Now, looking then -

pardon me, let me go back one step further then.

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Going back to page 52 of the chart would you agree

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with me that the notation then under 7/1 on page

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52 indicating hold digoxin is consistent with the

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doctor's order?

THE COMMISSIONER: 7/1 on page ...?

MS. SYMES: On page 52, Mr.  
Commissioner, under 7/1.

THE WITNESS: Yes.

THE COMMISSIONER: What do you mean,  
in the absence of any ---

MS. SYMES: Mr. Commissioner, on page  
52 there is a clear double word "hold hold" under  
7/1 of digoxin.

THE COMMISSIONER: I'm sorry, I can't  
find that.

MS. SYMES: It's on the top line, Mr.  
Commissioner, under the date 7/1, page 52.

MS. CRONK: Top right hand corner.

THE COMMISSIONER: Oh, I see, yes, yes.

MS. SYMES: On 7/1.

THE COMMISSIONER: Oh, yes, yes.

MS. SYMES: I asked Dr. Mancer, doesn't  
52, page 52 with the hold digoxin on 7/1 indicate in  
fact that the doctor's order of the same date 7/1/81  
had been effected?

A. Yes, that would indicate that.

Q. Now, would you follow me please  
with respect to digoxin orders on any date subsequent





1  
2 to the hold, that is, starting on page 200 and  
3 carrying through, can you find any place in which  
4 digoxin has been ordered to be started again.

5 Mr. Lamek wants to answer for you as  
6 he can't. The only finding I can find with respect to  
7 digoxin is on page 203, the top doctor's orders which  
8 is digoxin level in the morning. But that clearly  
9 doesn't say - I am sorry, are you with me, Dr. Mancer.

10 A. Yes.

11 Q. You would agree that certainly  
12 wouldn't indicate that any one was to give digoxin,  
13 it was just that a level is to be taken?

14 A. That's right.

15 Q. And as we carry through those  
16 doctor's orders right through to the death, and I  
17 think the last order is on page 205, at no time is  
18 digoxin ordered again.

19 A. Yes.

20 Q. So, would you agree with me  
21 that page 53, which is what kind of medications  
22 Baby Estrella was to be on, starting on the 10th of  
23 the one, that you wouldn't expect digoxin to be in  
24 the list?

25 A. Well, at the time I wrote  
these notes, which by the way it was about the middle







1  
2 of the week following the conversation with Dr.  
3 Tepperman, I didn't write those immediately.

4 Q. You didn't write the notes on  
5 March 20th, is that what you're saying?

6 A. No, it only became apparent  
7 that there was a real problem that all this would  
8 become of significance later and I should have some  
9 notes that I thought of dictating them - not  
10 dictating them but writing them. They were written  
11 in haste, as you can see by some of the words not  
12 being completed.

13 Q. I don't have a copy of them,  
14 but I don't think that is of particular significance.  
15 It doesn't matter.

16 A. Okay. I think that my thinking  
17 at the time was that seeing that digoxin column with  
18 a hold on the 9th and then finding no digoxin on the  
19 next led me to think that maybe there was a page  
20 missing. You see, it was probably a mistake.

21 Q. All right. !

22 A. I agree with that.

23 Q. Okay. I understand then maybe  
24 what your state of mind was when you dictated the note  
25 some time in the week of March 23rd, 1981. But would  
you agree with me now in looking at the patient's





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2 chart, that is, comparing the medication and nursing  
3 treatments to the doctor's orders that there certainly  
4 doesn't appear to be anything missing?

5 A. Yes, I think that's right.

6 Q. Now, it is our understanding  
7 from the process that when the police and the  
8 coroner came into the Hospital on the Monday, which  
9 is I think the 23rd of March, that at some point the  
10 patient charts specifically with respect to Estrella  
11 were seized by the police and taken away. Is that  
12 your understanding that everything with respect to  
these babies was taken by the police?

13 A. Yes, I believe that's true.

14 Q. So, what we have, my under-  
15 standing is that what we have in Exhibit 91 is a  
16 copy of what the police seized, that is, a copy of  
17 the Estrella record seized by the police from the  
18 Hospital for Sick Children. Now, in light of that,  
19 that what we have here before us is that there is  
20 clearly in your opinion nothing missing now on  
21 reflection in the medication and nursing treatments,  
22 I want to explore with you whether or not there is  
23 any possibility that from Friday March 20th when you  
24 left Dr. Ellis' office to the time that the police  
25 picked it up, whether or not it was in any way





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changed?

A. Well, I would doubt it.

Q. Because when you left on Friday March 20th at 3:50 in the afternoon the chart was in Dr. Ellis' office?

A. Yes.

Q. Okay. So, it is unlikely that it would go back to the ward because this patient was dead?

A. Well, I think I made arrangements with Dr. Tepperman as to where he would find the chart.

Q. And where was that?

A. I can't recall whether I asked Dr. Ellis to have it sent back to medical records, which would be an ordinary place for a coroner to find a chart and review it or whether he would come to Dr. Ellis' office, which I understand he probably did. But I know there was some communication between myself and Dr. Tepperman regarding where the chart would be.

Q. But I gather then that what we have now is Exhibit No. 91, the Estrella chart, it is likely the same document that you saw in Dr. Ellis' office on Friday?





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A. Yes.

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Q. Now, the second thing then

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I want to ask you about is what you had said to Mr.

5

Percival was the changes, circling and red marks on

6

the chart with respect to digoxin. Dr. Mancer, you  
were at some point in your career ---

7

THE COMMISSIONER: Before we forget,

8

all of our copies of course don't show the red marks.

9

Does the original show in red or did we have the

10

original or what?

11

MR. LAMEK: Mr. Commissioner, we have

12

the original. I confess I don't know what colour

13

the circles are. If Dr. Mancer's recollection is

14

red, I am perfectly prepared to accept it. I

will check it if you wish.

15

THE COMMISSIONER: Well, no, I just

16

wanted to raise that issue. I am getting just as

17

finicky as everybody else now. I just thought

18

it would be nice to know if we are talking about

19

the same thing and we won't be absolutely sure unless

we see whether those things are ---

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MS. SYMES: Perhaps Dr. Mancer can

21

remember.

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Q. Over the lunch hour I had asked

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you if you would look at the medication treatment

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record of patient Estrella which begins on page  
48.

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A. Yes.

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Q. And I had pointed out to you  
two changes in the digoxin transcriptions on pages  
50 and 51 and I had asked you if there were any  
others that you would have noticed and brought to  
Dr. Tepperman's attention on March 20th. Can you  
see anything else after having looked at that chart?

10

11

A. No, other than those two  
changes I can't really see anything.

12

13

14

Q. Okay. So, those are the two  
changes we are talking about, they occur on page 50  
and 51?

15

16

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A. Yes.

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19

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Q. All right. Dr. Mancer, can  
you recollect whether or not that bold writing on  
page 50 was in red on the original chart?

21

22

23

A. I think it probably was.  
I'm not really sure whether it was that one or the  
other one. I think it was the bold one.

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Q. Okay, the one that says  
0.0175 with brackets around it and then MG, that  
on page 50 you thought was in red?

A. I think so. I did notice one





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of the changes was unsigned too.

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Q. That's the change on page  
51, do you agree with me?

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A. Yes, yes.

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Q. It is 0.01 which is unsigned?

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A. Yes.

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Q. All right. Now, Dr. Mancer,  
let's take it when you were an intern at St. Boniface  
Hospital in Winnipeg. I gather you would have written  
doctor's orders on patients?

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A. Yes.

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13

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15

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Q. And is it standard practice  
then that those doctor's orders, and I have been  
referring you for example to page 194, any of those  
doctor's orders that the doctor writes the doctor's  
orders on doctor order sheets or something equivalent  
to that?

17

A. Yes.

18

19

20

21

Q. And then in order to give the  
medications they are transcribed, that is, re-  
written, nothing fancier than that, re-written to  
the portion of the chart that begins on page 48?

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A. Yes, that certainly is a  
practice at Sick Children's.

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Q. All right. And that is a





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generally known practice?

A. As far as I know.

Q. And would you agree with me that sometimes errors in transcriptions are made?

A. I would think that would be reasonable, yes.

Q. And in this particular case the errors that were made were a misplaced decimal point in both cases, weren't they?

A. Yes.

Q. For example, the error on page 50, that is, it was transcribed as 0.175 milligrams, I believe I have located the doctor's order on page 192 at the bottom of the page.

A. Yes.

Q. Do you see it?

A. Yes.

Q. Lanoxin and digoxin are the same thing?

A. Yes.

Q. And the order is for .0175 milligrams BID meaning twice a day, Dr. Mancer?

A. Yes.

Q. And on page 50 that was transcribed wrongly as .175 milligrams?





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A. Yes.

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Q. So, it is not surprising then that somebody would have seen that error and recognized that that was out by a factor of 10 from normal doses given to babies?

6

A. Yes.

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9

Q. Would you agree with me in light of the two subsequent entries on page 50 that the proper dose of digoxin was given?

10

A. Yes.

11

12

13

14

Q. So, with respect to that change, Dr. Mancer, now that we look at the doctor's order on page 192 and the transcription error which occurred on page 50 there is nothing mysterious or sinister about that change, is there?

15

A. No.

16

Q. It is perfectly explainable?

17

A. Yes.

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Q. Similarly, the transcription on page 51 of digoxin, I believe I had found that digoxin order not only on page 185 but I have also found it on page 194, Dr. Mancer. Well, perhaps I am wrong. I am sorry, the digoxin order on page 194 is 0.015?

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A. Yes.

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Q. And I'm sorry the digoxin order  
on page 185, I had pointed that one to you before,  
185 is - are you on page 185, Dr. Mancer?

A. Yes.

Q. Remember, half way down the  
page 0.01 milligrams Q-12 circle IV.

A. Yes.

Q. And there is a note "Given  
at 1120 hours" and a signature. Is that correct?

A. Yes.

Q. And that order is on the 18th  
I think.

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If we turn to page 51, then, that  
doctor's order then has been transcribed to be "digoxin  
(0.1) mg."

A. Yes.

Q. And "I.V. push q12h".

A. Yes.

Q. Would you agree with me,  
just from simply looking at the two pages, that the  
doctor's order again has been wrongly transcribed?

A. Yes.

Q. And the wrong transcription  
is a factor in the placement of the decimal?

A. Yes.

Q. So, Dr. Mancer, I guess  
it would not surprise you that it again had been  
corrected?

A. Yes.

Q. And the correction, "0.01",  
is the correct transcription of the doctor's order?

A. Yes.

Q. Would you agree with me  
again that there is nothing sinister or suspicious  
with respect to that change?

A. Yes.

Q. I want to ask you now





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about Exhibit 202A and 202B and the Estrella autopsy.

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A. I do not have the  
Exhibits 202A and B.

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Q. Dr. Mancer, when Dr. Taylor  
did this autopsy, you testified that he would have  
cut the rectum near the beginning of the autopsy; is  
that correct?

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A. Yes.

Q. When he did that on the  
Estrella baby, would the contents of the rectum or  
bowel, or both, have flown into the abdominal cavity?

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A. No. I believe that only  
a minute amount probably would have contaminated the  
abdominal cavity.

14

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Q. So, the answer is, some,  
but not all of the contents?

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THE COMMISSIONER: No. A minute  
amount was the answer.

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MS. SYMES: Some, a minute amount.

THE COMMISSIONER: You are quite  
right; it is some, but not all, but that is not quite  
what he said.

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THE WITNESS: In Part A, we are  
trying to duplicate what Dr. Taylor did with respect  
to tying parts of the bowel off, and it was his





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2 practice, as I obtained from him by telephone call  
3 shortly prior to drawing up this protocol, I found  
4 that he did tie the rectum and the jejeunum and he  
5 tried to avoid contamination by the contents. So,  
6 any contamination -- the minute amount that was on  
7 the stubs, the cut ends beyond the ties --

8 MS. SYMES: Q. And, Dr. Mancer,  
9 it is your understanding from Dr. Taylor that he did,  
10 in fact, do number 5 on Exhibit 202B, is it?

11 A. Yes, he would do number  
12 4 and then follow that by number 5. He did not  
13 sample the rectal contents, which is part of our  
14 study, but he would do number 4 and the first part of  
15 number 5.

16 Q. I am looking at 202B,  
17 which is the second one, dated September 7, 1982,  
18 just so that we have the right 4s and 5s.

19 THE COMMISSIONER: And 6.

20 MS. SYMES: Yes, that is why it  
21 is 5 and 6.

22 A. I am looking at August 24,  
23 sorry.

24 THE COMMISSIONER: These seem  
25 identical - 4 and 5 or 5 and 6.

MS. SYMES: Q. Let us look at the







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one that you actually did most of the study on, which I believe is 202B. That is what you said, that 202B is the protocol under which most of the tests were done; is that right?

A. Yes.

Q. Is it your understanding that Dr. Taylor, then, did both 4 and 5 with respect to tying off the upper jejeunum and rectum prior to the removal of the bowel, and then removed the bowel?

THE COMMISSIONER: Now I am getting finnickier again. It is 5 and 6; not 4 and 5.

MS. SYMES: 5 and 6.

THE COMMISSIONER: Yes.

A. Yes, that would be ordinarily his practice.

MS. SYMES: Q. Dr. Mancer, is that the ordinary practice at The Hospital for Sick Children in Pathology to do 5 and 6 before you carry on?

A. It depends on the pathologist. It is a matter of personal preference.

Q. So, it is not necessarily standard then, that these two items are done?

A. That is right.

Q. Would you agree with me





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that, if they were not done, then the cavity would be contaminated?

A. It would be contaminated to a greater extent if they were not done.

Q. And you say that, if they were done, the contamination would be minute?

A. Yes, but I would have to qualify that. They would be minute if the stub end of the rectum was not cut across, but we do not know, in Dr. Taylor's case, whether it was cut across. Because, if it were cut across, it is possible there would have been more contamination related to what was in the rectum.

Q. Exactly. That is just what I am trying to get to.

If Dr. Taylor did cut across the rectum, then the contamination could be great?

A. It could be.

Q. And we'll have to find out from Dr. Taylor what he did, if he can remember, do you agree?

A. Yes.

Q. Now, when the leg vein is cut at the time of autopsy, when the viscera are removed, is that at the beginning of the autopsy? I





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am not referring to the protocol particularly.

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A. Yes. After the bowel has been removed, during the removal of the remaining abdominal and chest viscera, the leg veins, the iliac veins, actually would be cut across.

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Q. At that point, do they then come, at the end of the leg veins, the ends at the top of the leg, come in contact with the contents that remain in the abdominal cavity?

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A. The body would be lying on its back and the contents, the fluids, the blood, any contaminants would tend to go downward and would be out of contact with the leg veins.

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Q. At the site of the cut, is there any possibility of contamination?

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A. It is not very likely. The cut would tend to be the antelateral pelvic wall, which would be a couple of centimetres above the floor of the back of the pelvis. One cannot be absolutely sure that the vein was not cut in the dissection at a more proximal - that is, closer to the inferior vena cava level. It might be down closer to where it could be contaminated. We cannot be absolutely sure, but it would tend to be too high to be contaminated by accumulating fluids in the







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abdominal cavity.

Q. Of course, when this autopsy was done, nobody, in fact, Dr. Taylor or anyone else, knew the problems of testing digoxin post mortem?

A. That is right.

Q. So, nobody would have been especially careful to keep a sample contaminant-free?

A. That's right.

Q. You said yesterday when the leg vein is milked, that the leg is elevated and pressure is applied from the ankle upward to get a sample of blood out.

A. Yes.

Q. And I gather that you also said yesterday, on page 8072, that that actual process of milking may have contaminated the leg vein sample, or second sample?

A. Yes.

Q. And there was some confusion in the answers you gave this morning, but is it also your opinion today that that second sample, the leg sample, may also have been contaminated?

MR. HUNT: What confusion was there this morning in regard to those answers?







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MS. SYMES: Both Mr. Hunt and Mr. Percival asked questions with respect to contamination of samples and specifically with respect to the autopsy report.

THE COMMISSIONER: I think it would be wise if, instead of reciting the evidence, you put the question. Would you mind just putting the question without any recitation of what took place, and we will get it clearly from the witness then.

MS. SYMES: Q. Is it also your opinion today that the second sample, that is, the leg vein sample, was also contaminated?

A. Probably to some degree. The reason for this being that tissue fluid, which we would expect - fluid around the cells but outside the venous system would likely have also been expressed downward and out into the abdominal cavity around the veins at the time of collection of the specimen as a result of milking this leg downward.

THE COMMISSIONER: You would milk it upwards, I would have thought; not milk it downwards.

MS. SYMES: The leg is elevated.

THE WITNESS: The elevated position of the leg - you are correct - in coming up towards the groin region from the ankle.





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THE COMMISSIONER: If you are milking it up, how do you get contamination from the top? I realize that this body is lying down. In fact, it may well be, as you say, the leg may be elevated but you are milking it toward the top of the leg, if I can say that?

THE WITNESS: Yes.

THE COMMISSIONER: From the ankle up?

THE WITNESS: From the ankle up, yes.

THE COMMISSIONER: Then how does it get contamination from the trunk?

THE WITNESS: The lower part of the leg - is that what you mean?

THE COMMISSIONER: I'm sure you can do it, but I just do not know how; that is all.

From the ankle up, you are pushing the blood up, is that not what you are trying to do, so you can get it out of a vein somewhere around the thigh or thereabouts?

THE WITNESS: Yes, that is right.

THE COMMISSIONER: And how does it get contaminated from the trunk?

THE WITNESS: A receptacle would have to be put at the cut end of the vein. This receptacle could not just include the vein; it would





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have to include the tissue adjacent to it.

THE COMMISSIONER; But the milking -- all I'm saying is, I can quite understand how there could be contamination, because it could somehow get down there, but, surely, the milking operation would have the opposite effect; that is all. I don't think that I would ever pass the medical exam - I can see that.

THE WITNESS: The milking operation brings blood from --

MS. SYMES: Q. The ankle?

A. The ankle.

Q. Up to the thigh?

A. Towards the thigh, yes.

And the reason we got confused about the down --

THE COMMISSIONER; I now understand that, but I still do not understand how the actual milking process could contaminate unless there is some contaminating material down around the ankle.

THE WITNESS: Around the vein there is all the tissue fluid which is tissue -- around every cell there is some fluid that is not blood and it is sort of a watery fluid which becomes lymph but it is outside the blood vessels and there tends to be a very large amount of that in people who are in heart





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failure. That is the reaon why they have swelling in  
their legs.

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THE COMMISSIONER: Yes.

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THE WITNESS: In the process of  
milking from the ankle to the thigh, one would be  
also moving some of that along and, when one tries to  
catch it in a receptacle at the site of the vein, the  
vein is ordinarily retracted a bit into the tissue,  
so one could not just get venous sample; he would  
also be getting the tissue fluid.

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There is a possibility that tissue fluid might contain a greater amount of digoxin which would have come from breaking down of the muscle fibres than normal tissue fluid, or tissue fluid in the normal state ante mortem. So that is what I refer to as the possibility of contamination.

Q. And that contamination would give a higher degree of digoxin in a sample collected than theoretically if it were straight blood?

A. It could.

THE COMMISSIONER: But it would depend upon whether there was more digoxin in the tissue than there was in the blood.

THE WITNESS: That is correct.

Q. Whether or not the digoxin had moved from the blood to the tissue and now was coming out again?

A. No, from the muscle to the tissue fluid.

Q. Starting the process, I understand digoxin goes into the blood and from the blood goes to the tissue?

A. Yes. It tends, we now know that it tends to concentrate in the skeletal muscles as well as the heart muscle.





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Q. So you are saying in the death process as the digoxin is released from the skeletal muscle, it would go into this fluid that surrounds the cells?

A. That is correct.

Q. And which would have been collected at the time that that sample was taken?

A. Which is likely to have contaminated the sample. It is likely to have included some of that by the method that I am aware of the sample was collected.

Q. I would like to ask a very simplistic question. Just within the vein itself, in a dead child, when that vein is squeezed or milked might bits of the vein come off as well?

A. That is possible, yes.

Q. Would that further contaminate the sample, in that you are not getting pure blood?

A. It would, yes.

Q. Now, in your autopsy report you quoted the levels of digoxin, and this is what you put in brackets: "(2.0 to 9.0 nanograms per mil.)"?

A. Yes.

Q. Obviously what you are referring to, Dr. Mancer, was the digoxin levels during life,





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those are the ---

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A. Yes.

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Q -- those are the digoxin levels  
in blood or serum during life?

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A. Yes, according to tables that I  
have, I wasn't referring to hospital norms.

7

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Q But the books that you looked at  
were clearly digoxin levels during life?

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A. Yes, that is correct.

10

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Q Did you have anything to refer  
to as to the digoxin levels after death?

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A. No.

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Q So I gather then when you were  
looking at the tables and writing your autopsy report,  
you had no knowledge as to what level a therapeutic  
dose of digoxin in life would give in postmortem blood?

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THE COMMISSIONER: Actually he thought  
they were the same, I thought that is what he said,  
he thought at that time, did you not, Doctor?

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THE WITNESS: Yes, at the time I  
assumed they were the same, but now we know that is  
not the case.

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MS. SYMES: Q And have you been  
involved at all in the tests as to the difference  
between the level of digoxin pre mortem, during life,





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and the level of digoxin post mortem, the tests  
carried out at The Hospital for Sick Children?

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A. Well, in that this protocol  
was mainly my design and - yes.

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Q. Is there a multiplier effect,  
that is between the levels pre mortem and the levels  
post mortem?

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A. What do you mean by multiplier  
effect?

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Q. In other words, if the level  
let us say is 1 in a premortem test, do you know what  
the levels are, what levels have you seen at The  
Hospital for Sick Children in postmortem blood?

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A. I have not been collecting that  
data.

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Q. Who has?

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A. Dr. Phillips.

17

Q. And he has been using Exhibit  
202A and 202B as the protocol in that test?

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A. Well, that would be the - it  
would be 202B that would be the one that was mainly  
used, because it shortly follows 202A.

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Q. Now, the final area, Dr. Mancer,  
is, you said that when you came into the Hospital on  
Monday at noon, and you met with the police and you

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were instructed to get the autopsy reports and sign-  
outs done as soon as possible?

A. I can't recall if that was the  
time I met with the police. I believe it wasn't until  
after the meeting on Tuesday morning that we received  
instructions to start to begin to complete the cases  
as soon as possible.

Q. So you said. So you started  
that process some time you think after the Tuesday  
morning meeting?

A. Immediately after, yes.

Q. Now you have told us I think  
that it is your practice that the resident actually  
does the autopsy?

A. That is correct.

Q. And does a draft report?

A. Yes, that is right.

Q. Did you on Tuesday and Wednesday  
consult with the resident who was actually present?

A. Yes, in each of the cases that  
were finished up we did it with the resident, that  
is my recollection.

Q. All the residents who had done  
the autopsy were in fact present in the Hospital?

A. I can't recall that. We would





CC.6

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have been involved with the residents, but I can't specifically remember whether they were all present or not.

4

5

Q. Because I gather some people, either you or Dr. Cutz were doing the autopsy reports for Dr. Phillips who was away?

6

7

A. Yes.

8

9

Q. So then in that case you or Dr. Cutz would not have actually supervised the residents in the conduct of the autopsy?

10

11

A. That is correct.

12

Q. So you were completing a report that you had not actually supervised?

13

14

A. That is right.

15

Q. Which of the reports that you did is that the case?

16

A. That would be Gardner I believe. I can't read the initials beside Gardner but I am quite sure it was Gardner.

17

18

19

Q. That is the only one?

20

A. That was the one I did for Dr. Phillips.

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Q. Did you consult with the resident at all?

23

A. I must have, I can't remember.

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MS. SYMES: Thank you, those are all  
my questions.

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THE COMMISSIONER: That is fine, thank  
you.

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MR. LAMEK: Mr. Commissioner, I have  
some good news and some bad news in technicolour.

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THE COMMISSIONER: Yes, all right.

MR. LAMEK: In the original Estrella  
chart the heavy circle that appears on page 50 of our  
copy, I am glad to tell you is in red; as is 0.0175 mg,  
milligrams.

12

13

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THE COMMISSIONER: Yes.

MR. LAMEK: That is the good news.  
The bad news is that on page 51 the parentheses  
around the 0.1 and the 0.01 are in blue ink.

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THE COMMISSIONER: The blue ink, can  
you just tell us and anybody can examine the original,  
is it different, is it a different colour from the  
rest of the writing?

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MR. LAMEK: Well, Mr. Commissioner,  
there is black and blue on that page, it is of a blue  
comparable to the other blue but not at all like the  
black and it is not at all like the red that is on  
that page as well. I don't think these things are  
necessarily colour-coded.





CC.8

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MS. SYMES: Excuse me, could you help me, the original writing of digoxin 0.1 milligrams, what colour ink is that?

5

MR. LAMEK: That is in black.

6

7

MS. SYMES: And are you telling us then the brackets around the 0.1 and the 0.01 above it are in blue?

8

MR. LAMEK: Yes.

9

MS. SYMES: Thank you.

10

11

THE COMMISSIONER: No, I am sorry, they are in red, are they not?

12

13

MR. LAMEK: Just to confuse matters further, Mr. Commissioner, on page 50 ---

14

15

THE COMMISSIONER: But Miss Symes said they are in blue and you told us they are in red.

16

17

MR. LAMEK: No, on page 51 the 0.01 is in blue.

18

THE COMMISSIONER: Yes.

19

MR. LAMEK: Going back to page 50 then, Mr. Commissioner ---

20

21

THE COMMISSIONER: That is in red.

22

23

MR. LAMEK: Just so things may be clear beyond a peradventure, although the parentheses and the 0.0175 milligrams are in red, where those

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numbers appear above the name P. Trayner, they are  
in black.

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MS. SYMES: Excuse me, what colour  
is P. Trayner signed in?

5

6

MR. LAMEK: Blue.

7

THE COMMISSIONER: I think we will  
withhold any further information and somebody can  
inspect the original on their own. Now Miss Jackman.

8

9

MS. JACKMAN: No questions, Mr.  
Commissioner.

10

11

THE COMMISSIONER: Mr. Olah.

12

MR. OLAH: Before I commence, did you  
want to take the afternoon recess, Mr. Commissioner?

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14

THE COMMISSIONER: How long do you  
intend to be?

15

MR. OLAH: About 15 minutes.

16

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THE COMMISSIONER: Oh, all right, I  
guess we will take the - what time is it now, is it  
3:25?

18

19

MR. LAMEK: 3:25.

20

21

THE COMMISSIONER: I think not because  
we came in at 20 minutes to unless somebody is in  
dire straits. This is a mildly democratic organization,  
Mr. Olah, and if you would prefer to have some time  
to prepare yourself I will give in.

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CC.10

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MR. OLAH: Well, I am grateful for  
that suggestion but I will just carry on.

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CROSS-EXAMINATION BY MR. OLAH:

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Q Doctor, have you got your notes  
in front of you that came out during the examination  
by Mr. Percival?

6

7

A. Yes.

8

9

Q Perhaps you could turn to the  
first page and, I'm sorry, page 2, have you got a  
copy of this, Mr. Commissioner?

10

11

THE COMMISSIONER: No, not yet, because  
remember we have not made it an exhibit.

12

13

MR. OLAH: Why don't we make it an  
exhibit at this time so everyone will have a copy.  
May I ask that be marked as the next exhibit, please,  
Mr. Commissioner?

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15

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MR. BROWN: For the sake of  
consistency.

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THE COMMISSIONER: Yes, we may be in  
trouble with the motion next Tuesday, but there you  
are. You are objecting to it?

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MR. BROWN: There is no doubt we would  
like to see as much as we possibly can, but at the  
same time we still want the Inquiry as best as  
possible to be conducted in two segments.

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CC.11

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Now Dr. Mancer was examined very specifically on the question of this conversation on May the 20th and also with respect to May the 24th ---

THE COMMISSIONER: All right. Could I make a comment on the law. At the moment there is no question you are right, but it can't go in unless there is something to be proved by them through the witness. That is if something in the note shows that something he gave earlier should be qualified. So if you want to just leave it at that. You are forcing me to apply the law and something that has not been done for some time. If you find something that you think will qualify in the evidence that has been given then you can tender it.

MR. OLAH: The only reason I wanted to put it in was to make sure that you had a copy and everyone else had a copy, it was just a matter of facilitating things.

THE COMMISSIONER: And it is a matter of some thousand trials I have had to get along without that until somebody put them in, so perhaps I can survive through this one.

MR. OLAH: I was just trying to assist you.

THE COMMISSIONER: I know you were, I know you were.





CC.12

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MR. OLAH: I don't want to stir up a hornets' nest with Mr. Sopinka, so I will just proceed without pursuing the request.

5

THE COMMISSIONER: All right, okay.

6

7

8

MR. OLAH: Q In reviewing it I was just curious about a couple of things you noted. On March 23rd you have a notation the third line from the bottom:

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10

11

"Dr. Freedom was agitated and wanted to see me but he didn't return."

Did you subsequently see Dr. Freedom?

12

A. No.

13

14

Q Did you ever find out why he was so agitated about it and why he wanted to see you?

15

A. No.

16

17

18

Q Now on the 2nd, it looks like page 4, it is not numbered, it is only about five or six lines on that page, it must be the fourth page of your notes and it says:

19

20

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"We made plans to go quickly sign out all remaining cases on the suspect January-March 22 list of 12."

Does that assist you in perhaps ascertaining the source of that list that you were examined on this morning?







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A. I think it is consistent with  
that - there are 12 names.

THE COMMISSIONER: It doesn't tell us  
though where we got the list and that is what the  
issue was about this morning.

MR. OLAH: Yes, I thought that it  
might assist in finally tracking down where the list  
came from.

THE WITNESS: It doesn't help me at  
this point.

MR. OLAH: Q. Now a couple of matters  
just generally, Doctor, that I was curious about. Is  
serum not taken generally at autopsies only when  
there is specific request for some sort of analysis?

A. For toxicology that is true, yes.

Q. The general question I have is,  
is serum generally obtained during an autopsy  
irregardless of a request being filed?

A. At that time it wasn't.

Q. All right, I want to talk about  
January 1981 to March 22nd, 1981, all right?

A. Yes.

Q. So generally serum was not taken?

A. Correct.

Q. Where there was an autopsy, you





CC.14

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have told us already that tissue was, for the heart,  
was maintained, was taken?

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A. In general, yes.

5

Q. In general?

6

A. Yes.

7

Q. And was it then kept by the  
Hospital thereafter, or what happened to the heart,  
generally?

8

9

A. Well, in the cardiac cases it  
would generally be retained by the Hospital.

10

11

Q. And it would be then put into  
some sort of a solution to preserve it?

12

13

A. Yes.

14

Q. Am I accurate in knowing, or in  
saying, that in the cases that we are talking about  
where there was an autopsy in each and every case,  
the hearts were kept and preserved?

15

16

17

A. That is probably true.

18

Q. What about other tissue samples,  
were they generally taken and preserved in the same  
manner as say, kidney, or any other parts of the  
anatomy?

19

20

21

A. No.

22

Q. Now, what I was curious about  
was the communication between pathology and say the

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CC.15

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cardiac floor? I think at one point you indicated that, as you understood with respect to the Pacsai matter, that Dr. Cutz telephoned Dr. - I am sorry, what was the name of the doctor that he telephoned the level to?

A. What date are you talking about?

Q. I believe it would have been on or about March the 18th, 1981, I think it was telephoned to Dr. Costigan?

A. No, I don't believe that is right.

Q. Somebody telephoned Dr. Costigan I understood, the results of the digoxin reading in the postmortem blood or serum of Pacsai?

A. Yes, I don't know who did.

Q. You don't know that?

A. No.

Q. Was there a general routine, or practice, that if something unusual was observed at Pathology to telephone someone on the ward to advise them of that?

A. Yes, I believe that would be a fair statement.

Q. Surely you wouldn't wait if there was something highly unusual about the autopsy





CC.15

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for two months for the preliminary autopsy report to reach the source, namely the cardiac ward, would you?

5

6

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A. Well, I don't think we are talking about - like ordinarily the preliminary autopsy report would be done in the 24 hours after the death and be sent to the ward.

8

9

Q. And we are talking about the final autopsy report?

10

11

12

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A. Yes.

14

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Q. And of course toxicology reports would not be contained in the preliminary autopsy report?

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A. That is correct.

21

22

23

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Q. So that if something unusual came out of toxicology it would only go into the final postmortem report?

A. Yes, that is right.

Q. And that would generally take approximately two months to reach its ultimate source of destination?

A. That's right.

Q. So generally though you had the postmortem results, or the pathology Biochemistry results back fairly soon after the autopsy was conducted?







CC.16

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A. Generally Biochemistry results  
would come back fairly soon, yes.

4

Q. For instance, in the case of  
Estrella; have you got the exhibit there, the  
medical records, Doctor?

5

6

A. Yes.

7

8

Q. Exhibit 91, and if you will turn  
to page 157, the Toxicology results or the  
Biochemistry results were reported back to Pathology  
on or about January the 20th, 1981?

9

10

11

A. Yes.

12

Q. That would be what, about 10  
days after the autopsy was carried out?

13

14

THE COMMISSIONER: No. I don't know ---

15

THE WITNESS: That is about nine days  
after.

16

MR. OLAH: Okay.

17

18

THE COMMISSIONER: I am sorry, I just  
want to say, and we are going way back when, this  
is the computer printout or whatever it is. I notice  
"results flagged and reported today", which probably  
means the 11th of January, doesn't it?

19

20

21

MR. OLAH: I was going to come to that.

22

23

THE COMMISSIONER: I am sorry, I am  
getting ahead of you. You have an agreement from

24

25





CC.18

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the witness from a leading question and I didn't  
accept the proposition, that's all.

4

MR. OLAH: Let me see if I can  
clarify that for you, Mr. Commissioner.

5

6

Q Would in some cases in fact  
the results be reported back by telephone to  
Pathology by Biochemistry?

7

8

A. In some cases they would.

9

10

Q But in any event if something  
unusual occurred as a result of the Biochemistry  
tests, I think you indicated earlier to me that you  
would generally phone the ward, would you not?

11

12

A. Ordinarily we would.

13

14

Q Okay.

15

A. We would phone the doctor  
responsible.

16

17

Q Do you know if - first of all,  
who did the results get reported to in the Estrella  
case from Biochemistry and Pathology?

18

19

A. It is my understanding that the  
report went to Dr. Taylor.

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Q. Now, Dr. Taylor was  
under your instruction and supervision, was he not?

4

A. He was under my super-  
vision.

5

6

Q. And would you normally  
expect Dr. Taylor to report to you something unusual  
of this kind?

8

A. Well, it must be  
remembered that Dr. Taylor was asked to do it by  
Dr. Freedom, who he tried to contact.

10

11

Q. The question was, would  
you normally expect Dr. Taylor to report an unusual  
finding of this kind to you?

12

13

A. Well, in this particular  
case --

14

15

Q. I'm not talking about a  
particular case. I'm talking about would you expect  
normally something unusual of this kind to be reported  
to you by Dr. Taylor?

16

17

18

A. Possibly.

19

Q. All right.

20

A. Not necessarily but

21

possibly.

22

Q. In any event, the normal

23

course would be to report something like this from

24

25





.Mancer  
cr.ex. (Olah)

1  
DD2 2 Pathology fairly quickly to the floor, right?  
3 A. Yes, to the doctor  
4 responsible.  
5 Q. Okay. And that's what  
6 in fact occurred as far as you are aware in this case?  
7 A. Yes.  
8 Q. The report went to Dr.  
9 Freedom?  
10 A. Well, the report went to  
11 Dr. Taylor I understand, who then tried to contact  
12 Dr. Freedom.  
13 Q. Yes.  
14 Do you know approximately when  
15 that would have been reported by Dr. Taylor to Dr.  
16 Freedom?  
17 A. I believe that Dr. Taylor  
18 indicated that it was some time near the end of  
19 January. I don't know exactly.  
20 Q. Now, are you familiar  
21 with a pathologist by the name of Dr. Derek De Sa  
22 of Winnipeg?  
23 A. Yes.  
24 Q. And he's the Chief  
25 Pathologist for, what is it, Winnipeg General Hospital?  
A. Well, the Children's  
Centre.







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Q. Children's Centre?

A. Yes.

THE COMMISSIONER: How would you  
spell Dr. De Sa?

MR. OLAH: I believe -- I am  
trying to read my writing, Mr. Commissioner. It is  
D-e S, and I believe it is an 'a'.

Q. Have you had an opportunity  
to read the Atlanta Report or expurgated version  
of that?

A. Yes.

Q. Did you read the report  
dealing with the baby Jordan Hines?

A. I can't recall anything  
specific about it, but I read it.

Q. Let me just read to you  
one line from there. That deals with the conclusion  
of the pathologist.

"However, he emphasized that this  
is a disease..."

Referring to SIDS

"...without specific autopsy  
characteristics and therefore he  
considered this death one of the  
three not fully explained by





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autopsy findings."

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Do you agree or disagree, Doctor,  
that SIDS is a disease without specific autopsy  
characteristics?

5

6

A. That's a difficult question  
to answer. It has certain characteristics ordinarily  
but it is an entity in which one would have --

7

8

Q. I'm sorry?

9

10

A. It is a disease entity  
in which other causes of death would have to be  
excluded before calling it Sudden Infant Death  
Syndrome.

11

12

MR. OLAH: Could I have Exhibit  
161, Mr. Registrar.

13

14

Thank you.

15

16

Q. I would appreciate if you  
would take a moment and tell me whether you are  
familiar with Exhibit 161 or whether you have ever  
seen it before?

17

18

A. I have never seen it  
before.

19

20

Q. I was wondering if you  
would simply look at the first line under the  
heading "Pathology":

21

22

"SIDS, the death without sufficient

23

24

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DD5

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pathology."

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Is that your understanding  
generally of opinions held within your particular  
area of expertise as to SIDS?

5

6

A. It is a strange sentence,  
"SIDS is a death without sufficient pathology". I am  
not quite sure what the author means by that.

7

8

9

10

Q. Let me then turn you if  
I may, Doctor, to something that you are more familiar  
with and that is Exhibit 198.

11

12

Have you got a copy of that table  
that you prepared with you?

13

A. Yes. Yes, I do.

14

15

16

Q. Now, as I understood  
your evidence with respect to Baby Hines, you had  
question in your mind as to the pathological diagnosis  
and hence the question mark beside "crib death".

17

18

19

A. Well "Query crib death"  
I believe came directly from Dr. Becker's diagnosis  
on the chart.

20

Q. You saw the report that  
was prepared by Dr. Becker?

21

22

A. Yes.

23

Q. And you spoke to Dr.  
Becker before preparing this table?

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A. I don't remember.

3

Q. Now, this was a table

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that was prepared either on March 24th or the morning  
of March 25th, correct?

5

A. Yes.

6

Q. And that was prepared for  
the purposes of assisting the police and the Coroner?

7

8

A. Yes.

9

Q. And by then, that is, the

10

time you prepared this table, you knew there was a  
homicide investigation ongoing?

11

A. Yes.

12

Q. And you knew that there

13

were probably at least four babies' deaths being  
investigated?

14

15

A. Yes.

16

Q. And you also had had the

17

weekend to think about these deaths, correct?

18

A. Yes.

19

THE COMMISSIONER: Was available  
anyway.

20

MR. OLAH: Q. And in fact you

21

had thought about these babies for some period of  
time before preparing this exhibit?

22

23

A. To some extent, yes.

24

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DD7

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Q. Well, that's your evidence yesterday as I recall.

THE COMMISSIONER: He also, I think he said that he really didn't have any more to do with the matter and I don't know whether he takes his work home with him, whether he thought about it over the weekend or not, but you might ask him that question if you think it is important.

MR. OLAH: Well, I've got a note that he spent the weekend and then later on somewhere along the way he said it was Monday and Tuesday thinking about these.

THE COMMISSIONER: I haven't that note but maybe you're right.

So, we will now ask you: What did you spend the weekend doing?

Please don't answer that question.

Did you consider this problem deeply over the weekend?

THE WITNESS: No, I don't think I considered it deeply. I probably thought about it to some extent. I knew there was a problem and as far as I was concerned I carried out my duty in reporting it and I would have continued to think a bit about it but I certainly didn't spend the whole





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weekend thinking about it.

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MR. OLAH: Thank you for your  
assistance, Mr. Commissioner.

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THE COMMISSIONER: Well, I don't  
know whether I'm assisting you or not. My impression  
was that he had more or less dismissed it from his  
mind after consulting with Dr. Ellis and the Coroner.

6

7

8

MR. OLAH: Well, my notes may be  
in error.

9

10

Q. In any event, Doctor, the  
point I did want to make is this. Certainly when you  
prepared this document, and I think you have advised  
us of this, you felt that digoxin could not be ruled  
out as the cause of death with respect to Baby Hines?

11

12

13

14

15

A. Yes, in the setting that  
we were in on March 24th or 25th.

16

17

18

19

Q. So that it was in the  
intermediate category; that is, between the category  
you had Miller and Cook in, digoxin overdose, and  
babies like Thomas and Warner, which were in the  
category natural?

20

21

22

23

A. Yes.

24

25

Q. Now, Doctor, did you  
subsequently become aware then that in fact Baby  
Hines was never prescribed digoxin and never received





DD9

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digoxin at the Hospital for Sick Children?

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A. I became aware subsequently that he was never prescribed it.

5

6

Q. Or wasn't supposed to receive digoxin certainly for therapeutic purposes.

7

8

Did you also become aware of the fact that digoxin and digoxin-like substances were found in tissue, exhumed tissue of Baby Hines?

9

10

A. I became aware of that later.

11

12

13

Q. Did that assist you, or did that change your opinion as to where Baby Hines' death should be placed in terms of categorization as you had indicated on the table we discussed?

14

15

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19

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A. Well, at that point -- we would have to remember that we were dealing with exhumed tissue and one can't be quantitative about digoxin levels in exhumed tissue, which is my understanding. So, I would think that the presence of digoxin in that baby would raise my suspicions a bit higher but it doesn't really prove it.

21

22

Q. Okay. Upon receiving that information did you move the categorization from the intermediate category or did it remain there?

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A. I didn't change anything





DD10

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on this table.

Q. No, in your own mind?

A. We had nothing to do --

Q. No, I'm talking about  
your own mind, Doctor. Did you in your own mind --  
did that information change the categorization at all

A. Not to the category of  
certainty.

Q. Okay.

Mr. Commissioner, I see it is  
a quarter to four. Do you know wish to take that  
break?

THE COMMISSIONER: I guess you've  
one, Mr. Olah. I guess we'll take the break.

MR. OLAH: It might be the only  
time, sir.

THE COMMISSIONER: We'll take  
fifteen minutes. Yes, all right.

--- recess.







EE: 1  
DP:  
yk 2

--- Upon Resuming.

3 THE COMMISSIONER: I want to say  
4 just a word before you get started and it is about  
5 scheduling and what have you. I still have a quiet  
6 hope, everybody else laughs at me, that we might  
7 just finish with Dr. Mancer today. We might have to  
8 sit a little bit late to do that. On the other hand,  
9 I am not going to rush counsel if they have a lot  
10 of things that they want to ask about.

11 It does not look promising, tomorrow,  
12 to get through with Dr. Katz but he is still going to  
13 be called as soon as Dr. Mancer is finished. We  
14 may find that we have to stop after the examination  
15 in chief. So there we are. However, that is all I  
16 can tell you.

17 Now, Mr. Roland, if you want to  
18 proceed and worry Dr. Mancer about his weekend  
19 activities.

20 CROSS-EXAMINATION BY MR. ROLAND:

21 MR. ROLAND: I just cannot persuade  
22 you, Mr. Commissioner, that my note was not in error,  
23 however I have the page reference if you desire it.

24 THE COMMISSIONER: Oh, no, that is  
25 fine.

MR. ROLAND: Q. A couple of quick  
matters that I would like to clear up with you,  
doctor, and that is you indicated I think at one point





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that there were problems with digoxin as tissue breaks down.

Do you perceive even more serious problems occurring in terms of understanding readings where we are talking about exhumed tissue?

A. I missed one word, before readings.

Q. Do you perceive there being difficulties in evaluating digoxin readings where we are getting them from exhumed tissue?

A. I think it would be best to ask a toxicologist that, in the sense of what he is dealing with.

I would expect, though, that with exhumed tissue there would be some degree of loss of fluid or change in amount of fluid in the tissue, and there probably is an addition of Formalin, embalming fluid, that would alter it too. But that is about as far as I would like to go in answering that question.

MR. ROLAND: Thank you, Mr. Commissioner, those are the questions I have.

THE COMMISSIONER: All right. Thank you. Mr. Labow.

MR. LABOW: Mr. Commissioner, Mr.





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3 EP23 Tobias would like to go before me and I have no objection  
3 to that, if that is all right with you.

4 THE COMMISSIONER: Yes, it is all  
5 right with me. You are presumably in the same  
6 interest.

7 MR. ROBIAS: I have another commitment,  
8 a personal commitement, Mr. Commissioner, later on  
9 this afternoon. That is why I have asked to be taken  
10 ahead of Mr. Labow so that I can make a hasty retreat  
when I am finished with this process.

11 THE COMMISSIONER: You won't find me  
12 objecting to that.

13 MR. ROBIAS: I did not think so,  
14 Mr. Commissioner.

14 CROSS-EXAMINATION BY MR. TOBIAS:

15 Q. Doctor, yesterday in examination,  
16 direct examination by Mr. Lamek, you were asked  
17 regarding Exhibit 198 and specifically what factors  
18 there were that led you to list the cause of the  
19 Hines death as "undetermined."

20 As I understood your evidence, you  
21 were essentially saying that given the events of  
22 recent times at the time that you were preparing  
23 Exhibit 198, and I assume by that you were referring to  
24 the police investigation and the information about  
25







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EE4 2 digoxin, is that what you were referring to when you  
3 referred to the events of recent times?

4 A. I was referring to the  
5 high digoxins in Estrella, Pacsai and Gardner  
6 that was known, and the investigation, yes.

7 Q. I understood you to say that  
8 given those events where there was any possibility  
9 of any question mark surrounding a death or any  
10 unexplained circumstances, caution would dictate that  
11 you could not rule out the possibility of digoxin  
12 and that is why you chose the category "Undetermined."  
Is that a fair summary?

13 A. Yes, that is fair.

14 Q. Specifically what you told Mr.  
15 Lamek is "Since we had other cases in which digoxin  
16 was known to be high and we had a case here which  
17 was signed out as '? Sudden Infant Death Syndrome'  
18 a tentative diagnosis, since Sudden Infant Death  
19 is a diagnosis really of exclusion, one really should  
20 exclude everything else before calling it that and  
21 now we have another possibility, so that is why we  
22 use the word 'undetermined'."

23 With respect to your concern over  
24 the fact that SIDS is a category of exclusion would  
25 you agree with me that if you did have any reasons







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to suspect digoxin and if indeed your suspicions were later confirmed, that that would be another cause that would allow you to have some difficulty with calling it sudden infant death syndrome?

A. If the levels were demonstrably high, yes.

Q. I also take it that with respect to the other readings that you had obtained, even though there was absolutely no hard evidence at the time of any digoxin levels in Jordan Hines, it was simply a possibility you could not exclude, given the other readings that you were aware of?

A. Yes.

Q. In fact at the time that the report was prepared, and I am referring to Exhibit 198, you had no information regarding digoxin levels in Jordan Hines at all, did you?

A. That is correct.

Q. Would it have been at that time, and I am going back to March 24th and 25th of 1981, I understand the child died on March 8, and the gross autopsy and the microscopic autopsy had been completed. Was it too late at that time to obtain a post-mortem serum sample from the body of Jordan Hines, to your knowledge?





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EE6 2

A. Yes.

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Q. So it would have been out of  
the question at that time to obtain a sample and submit  
it for the purposes of doing an assay?

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A. The child would likely have  
been buried already.

7

Q. I am sorry, doctor?

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A. Since the child had been buried  
already, yes.

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Q. Also in re-examination yesterday  
by Mr. Scott, you were asked the following question:

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"Yes. Now, will you tell us whether  
there are any differences between

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an autopsy that is done at the request  
of a staff member of the Hospital with  
the consent of the parent on the one  
hand ..."

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THE COMMISSIONER: Do you have a  
reference?

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MR. TOBIAS: Yes, page 8124, Volume  
40, Mr. Commissioner.

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Q. You were asked:

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"Now, will you tell us whether there  
are any differences between an  
autopsy that is done at the request  
of a staff member of the Hospital

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question?

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A. Yes.

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Q. I understood you to say that

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with respect to the medical/legal autopsy requested

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by a coroner, one of the things that you are concerned

13

about is directing your attention to the finding of

14

a specific cause of death, whereas with respect to

15

autopsies done in the ordinary course at the request

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of a clinician with parental consent, you would be

17

interested in correlating the autopsy findings and

18

the clinical course of the patient and explaining

any discrepancies between the two. Is that correct?

19

A. Yes.

20

Q. Certainly one of the things

21

that you must be concerned about, even in the

22

ordinary autopsy, done at the request of the clinician,

23

is, as best you can, the finding the cause of death.

24

Is that not one of the things you would be looking to

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EE8 2

do?

A. The primary thing is clinical pathological correlation, making a list of all the diagnoses, and if we can come up with a specific cause of death we would state that.

Q. If you were in a position, in other words if the autopsy findings confirm the clinical diagnosis and are consistent with the clinical events, clearly that resolves the issue in the autopsy report, does it not?

A. Yes.

Q. And it is an attempt to try to come to that kind of resolution. That is what an autopsy report really is supposed to do, try to come to that conclusion if possible, or, if there are differences, to explain the differences.

Would you agree with that?

THE COMMISSIONER: I would hope not, but perhaps - this is a teaching hospital, is it not?

MR. TOBIAS: I am sorry, sir?

THE COMMISSIONER: I would hope that that is not so, but I will give him an opportunity to agree with you if you like. This is a teaching hospital and surely its object is to discover the truth, is it not?







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MR. TOBIAS: In that regard, Mr.

Commissioner, and being sensitive to that concern of yours, let me rephrase the question.

Q. Doctor, I am certainly not trying to imply or suggest in any manner whatsoever that the results are slanted in any way to try and explain away a cause of death.

What I am saying is that if the pathological evidence is there to support the diagnosis, then there is a clear answer with respect to the cause of death and the autopsy report answers that.

If not, if there are significant differences, is the object of the autopsy report not to try to explore those differences and if there is a valid medical answer there for those discrepancies, to give the explanation?

A. It is a very long, complicated question.

THE COMMISSIONER: I don't think you will find that question as offensive as the one before.

MR. TOBIAS: I would hope not.

THE COMMISSIONER: The one before seemed to indicate that the object of the autopsy is





EE10

1  
2 to prove that the clinicians were right.

3 MR. TOBIAS: No, that was not my  
4 intention, sir.

5 THE COMMISSIONER: I hope it is not  
6 the intention of the Hospital, that is all.

7 Q. Clearly, doctor, let us ask  
8 that question first. That would not be the intention  
9 of the hospital Pathology Department, would it?

10 THE COMMISSIONER: I think you can  
11 answer that one - I don't know whether that should  
12 be yes or no.

13 Q. I invite you to grab the  
14 opportunity to give me a very quick "Yes" to that  
15 question, doctor.

16 A. We give honest answers.

17 Q. And perhaps this will bring us  
18 to the nub of what I am trying to get to.

19 You told Mr. Scott later on in  
20 your examination yesterday, and I am now referring,  
21 Mr. Commissioner, to page 8128 at line 18. Mr.  
22 Scott asked you:

23 Q. Yes. But I take it a normal  
24 final autopsy report requested  
25 by the clinician is in the nature  
of a research study?"





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Your answer was "Sort of, yes."

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I am only interested in your expanding, if you can, upon that explanation. What did you mean by "Sort of, yes." Is it or is it not intended as well to be in the nature of a research document?

A. I did not like the use of the term research. The object is to come up with a list of diagnoses, all the diagnoses that we can find and then to correlate these with the clinical course and explain any discrepancies, and possibly come up with a cause of death. That is what I want to say, and I hope I have tried to say that consistently over two days.

Q. Fine. Just to assist me in my own understanding, what do you mean by the expression "Correlate the pathological findings with the clinical diagnosis".

A. Take into account the clinical findings and relate them to the pathology findings.

Q. So what you are really saying is that if the pathological findings tend to confirm the clinical diagnosis, then really you know what the cause of death was.

THE COMMISSIONER: Do we have to say





EE12 2 "tend to"? Can you not say "If they confirm".

3 If they confirm, then there is no problem. If they  
4 do not confirm then surely that is the point of the  
5 autopsy - one of the points.

6 Forever, I don't know - all right,  
7 you go ahead, Mr. Tobias. I don't have too much  
8 trouble with what the purpose of an autopsy is.  
9 It is to find out - one of the purposes at any rate  
10 is to find out whether the diagnosis and the views  
11 of the clinicians at the time the child was alive  
12 are confirmed by the pathological findings. That  
13 is, to find out whether they are, not to seek to  
14 confirm them or, for that matter, to seek to dis-  
15 affirm them.

16 Q. Doctor, do you agree with me  
17 that the Commissioner's view is correct. Do you  
18 agree with what he has just said?

19 THE COMMISSIONER: Say no to that  
20 one, doctor - however, you go ahead - is that not  
21 the purpose of an autopsy - no?

22 THE WITNESS: I tried to state it  
23 before in as clear a way as possible and now several  
24 other ways are put to me and I'm getting a bit  
25 confused.

THE COMMISSIONER: We will forgive you







EE13 1  
2 for not answering that question. You just work on  
3 my interpretation of it and go on from there.

4 Q. In any event, I was going  
5 to move on, Mr. Commissioner.

6 Doctor, I believe you also mentioned  
7 to Mr. Lamek yesterday in chief that at the time you  
8 examined the final autopsy report with respect to  
9 Jordan Hines it was your understanding from the  
10 language of the report itself that the diagnosis of  
11 Sudden Infant Death Syndrome was a tentative  
12 diagnosis?

13 A. Yes.

14 Q. I take it that at the time  
15 you read the report you had not had an opportunity  
16 to have a first-hand discussion with Dr. Becker  
17 regarding the report?

18 A. I don't recall any first-  
19 hand discussion.

20 Q. At that particular time was  
21 there any confusion in your mind about what he meant  
22 about the report or were you fairly clear on what  
23 the "Sudden Infant Death Syndrome" meant, and I  
24 am referring now to in your own mind?

25 A. I would interpret that as  
he was making that as a tentative diagnosis and that  
he still had some questions about it.





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Q. Fine. You also told us yesterday that when Exhibit 198 was being prepared, and correct me if I am wrong, there was no consultation with Dr. Becker regarding his reports before the information in Exhibit 198 was filled in. Was that your evidence?

A. I can't recall any communication. My evidence I think was that.

Q. Was that because since there was no confusion in your mind at that time about what the report meant there was really no reason to consult with him. You were satisfied with the information you got from the report?

Can I take that to be a fact?

A. I can't remember whether I consulted with him or not, so I really cannot go any further. I really don't know whether I talked to him or not. How can we draw any more conclusions than that.

Q. So you are saying it is possible you may have consulted with him?

A. Yes.

Q. You just don't recall whether you did or did not?

A. That is right.





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Q. You indicated I believe yesterday to Mr. Lamek and again today in Mr. Olah's examination of you that SIDS is basically a diagnosis of exclusion. If I understand that correctly, what you are saying is one must exclude all other pathological explanations before they accept a diagnosis of Sudden Infant Death Syndrome. Is that correct?

A. That is correct.

Q. Other than pathological factors, is it fair to say that if there is certain evidence of a SIDS death, pathologically, that there are other non-pathological factors that you are aware of that may have caused or contributed to death, that you would not be prepared to call it SIDS?

A. Certain other factors?

Q. Yes.

A. As, for example, toxicology.

Q. Let me give you an example.

We know at the time the autopsy on Jordan Hines was done there was no toxicology testing done and Dr. Becker has already told us that he certainly was not aware of any digoxin readings. You have already told us that there were not, at the time you prepared Exhibit 198.





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2 Had the readings been there - had  
3 toxicology tests been done and had that been a  
4 factor that you were presented with, would that  
5 have been sufficient other evidence to you of  
6 suggesting a cause other than SIDS to have caused  
7 you to rule out the diagnosis of SIDS or at least  
8 to be still more tentative about it?

9 A. Yes, if it was up in the fatal  
10 range, yes, that would exclude SIDS in my mind.

11 Q. You were also asked by Mr.  
12 Olah as to your reaction when you became aware of the  
13 digoxin readings in Jordan Hines, and I believe the  
14 specific exchange, as I have it in my notes, was that  
15 you were asked that if in any way this would have led  
16 you to change your categorization of the Hines case.  
17 I believe you said no, that the knowledge of the  
18 digoxin reading may have raised your suspicions  
19 somewhat but you don't think it would have raised them  
20 from a category of intermediate to a certainty.

21 First of all, when you say that it  
22 would have raised your suspicions do you mean  
23 suspicions regarding digoxin intoxication? Is  
24 that what you are referring to?

25 A. Yes.

Q. I might ask you just the







Mancer, cr.ex.  
(Tobias)

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2 opposite question, or the other side of the coin,  
3 if I may, I'm not interested in knowing whether or  
4 not you would have felt that because of that  
5 information it was more certain to be digoxin  
6 intoxication but simply this: when you became aware  
7 of the readings did it in any way cause you to be  
8 somewhat more concerned or tentative in your own  
9 mind about the Sudden Infant Death Syndrome diagnosis?

10 A. At the time I became aware  
11 of the findings of digoxin in Hines, I understand that  
12 to be your question?

13 Q. Yes.

14 A. I was really not involved any  
15 more with the Hines case. My involvement really  
16 ended with the creation of this table so I had  
17 really no direct involvement at all in that case  
18 later.

19 Q. But you had read Dr. Becker's  
20 pathology report?

21 A. I had read it prior to - if  
22 I was the one of the two of us, Dr. Cutz and I, that  
23 decided that it should be in an undetermined category  
24 I would have been the one that read it. Either Dr.  
25 Cutz or I read it and one of us put "undetermined"  
down there.





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Mancer, cr.ex.  
(Tobias)

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Q. Fair enough. You have no  
specific independent recollection of having read  
it yourself?

A. No.

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Q. Let me ask you this question.

Assuming for the moment, because I assume you have read the chart?

A. No, I haven't.

Q. Or the pathology report have you not?

A. Not recently. I have seen it, but I haven't read it.

Q. Perhaps Mr. Registrar, the witness could have Exhibit 103.

THE COMMISSIONER: What is the question going to be, Mr. Tobias?

MR. TOBIAS: It is simply going to be, I am going to ask him to briefly look at the chart. I am going to highlight the primary observations ---

THE COMMISSIONER: Yes.

MR. TOBIAS: And ask him with that knowledge whether he now has any discomfort, or concern with respect to the digoxin levels.

THE COMMISSIONER: Are you asking the witness to read the chart?

MR. TOBIAS: I am sorry.

THE COMMISSIONER: Are you asking the witness to read the chart?





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2 MR. TOBIAS: No I am only asking him  
3 to direct his attention for a few moments to the  
4 final pathology report.

5 THE COMMISSIONER: Yes, all right.  
6 103A it is concluded ---

7 MR. ROLAND: Mr. Commissioner, I don't  
8 want to unduly interrupt my friend. This witness  
9 has said he looked at this report when he came to  
10 make Exhibit 189 ---

11 THE COMMISSIONER: He said he may or  
12 may not.

13 MR. ROLAND: He may or may not. What  
14 use is it to have this witness interpret what we  
15 have already had from Dr. Becker that is in greater  
16 detail, the author of the report, what he meant and  
17 what he intended it to say.

18 THE COMMISSIONER: I think there is a  
19 good deal in what you say, Mr. Roland. You see  
20 this final autopsy report is from the subject of  
21 immense cross-examination.

22 MR. TOBIAS: I understand.

23 THE COMMISSIONER: By almost everybody  
24 of Dr. Becker.

25 MR. TOBIAS: I understand that, sir.

THE COMMISSIONER: Is it fair to put







1  
2 the autopsy report itself without the cross-  
3 examination as well to him. Are you really asking  
4 him now what his opinion is, is it something he  
5 didn't apply his mind to after the 24th or the 25th  
6 of March, 1981. Is it fair to put that question  
7 to him now?

8 MR. TOBIAS: I think it is, sir.

9 THE COMMISSIONER: Well it is if you  
10 give him all of the information. If you give him the  
11 final autopsy report; you give him all of Dr. Becker's  
12 cross-examination; you give him all of the other  
13 matters that are there. Anyway, whatever his opinion  
14 is I am not that impressed by it and I am not being  
15 insulting. Because this is not something he has  
16 been called as an expert on SIDS to tell us whether  
17 or not the Hines baby died of SIDS.

18 MR. TOBIAS: If I may just briefly  
19 respond however to Mr. Roland's comments Mr.  
20 Commissioner, and I will try to be very brief.

21 Why I am attempting to do this. It  
22 seems to me the final autopsy report is part of the  
23 record. The witness indicates that either he or  
24 Dr. Cutz read it, and based on the language of the  
25 report itself came to a certain conclusion.

THE COMMISSIONER: All right.





1  
2 MR.TOBIAS: I am merely asking him  
3 to familiarize himself with that document now and  
4 to tell me now, not what his reaction would have  
5 been a year ago, but now, whether he would have  
6 been slightly concerned once he had the additional  
7 information.

8 THE COMMISSIONER: He is slightly  
9 concerned.

10 MR. TOBIAS: All right, I think that  
11 is an even fairer way of putting it.

12 THE COMMISSIONER: You can ask him  
13 what his view is as to what the child died of, if  
14 you want. Can I help your out on your answer.  
15 You can say I don't know, or I am not qualified if  
16 you want to and you will not be in any trouble with  
17 this Commission.

18 THE WITNESS: I think I shouldn't be,  
19 I'm not qualified to talk any more about Jordan  
20 Hines.

21 MR. TOBIAS: Can we then reject all  
22 of the evidence that you have given us regarding  
23 Jordan Hines, Doctor?

24 THE WITNESS: I think I have explained  
25 my minimal involvement, if that much involvement,  
already.





1  
2 MR. TOBIAS: Mr. Commissioner, I am  
3 as interested in, as you are in saving some time.  
4 Perhaps we can do this. Can I just put the  
5 question and then you can rule on whether or not  
6 you think the question is fair.

7 THE COMMISSIONER: Now, I think I  
8 know the question and I know what the answer is  
9 going to be so I will rule that it is fair. You  
go right ahead.

10 MR. TOBIAS: All right, thank you, sir.

11 Q. Dr. Mancer, basically Jordan  
12 Hines was a child who had exhibited periods of  
13 apnea throughout the course of his hospital stay,  
14 combined with periods of brady and tachycardia.  
15 On autopsy there were four sign-posts, or markers  
16 of SIDS found; that was brain stem scarring; the  
17 persistence of brown fat; the thickening of the  
18 pulmonary arterioles; and extra medullary hematopoiesis.  
19 On that basis, Dr. Becker concluded that this was  
a Sudden Infant Death Syndrome case.

20 Today, knowing that that was, those  
21 were the highlights of the pathological findings,  
22 and in light of the information that you now have  
23 that digoxin was found in the body of Jordan Hines;  
24 and that he had not been prescribed digoxin; would  
25





1  
2 those facts as of today make your own conclusions  
3 with respect to Sudden Infant Death Syndrome some-  
4 what less positive?

5 THE COMMISSIONER: You note he said  
6 "would make them less positive", I didn't think they  
7 were that positive in the first instance, but perhaps  
8 that is a proper conclusion. I thought it was  
9 crib death and cause "indeterminent", that is what  
he said, did he not at 189.

10 MR. TOBIAS: I think "query crib  
11 death" I think that was a tentative diagnosis.

12 THE COMMISSIONER: It is not a very  
13 positive claim.

14 Q. Let me ask the question this  
15 way, I think this is ultimately fair. You have  
16 already told us that on the basis of the knowledge  
17 you had at the time, your opinion was "tentative  
crib death", that is how you read the report.

18 Now that I have told you about the  
19 digoxin levels, and given that knowledge, are you  
20 any more tentative than you were then?

21 MS. SYMES: Mr. Commissioner, in  
22 fairness to the report, Dr. Becker said that there  
23 was no question in his mind that his diagnosis was  
24 clear unequivocal missed-SIDS.  
25







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2 THE COMMISSIONER: No, no, just a  
3 minute, don't put any more words to him he is in  
4 trouble enough already. Do you want to answer that  
5 question?

6 THE WITNESS: I think I have ---

7 THE COMMISSIONER: You have said all  
8 you want to say? All right. I think you have said  
9 all you want to say too and I think most of what  
10 you are saying is argument, Mr. Tobias so I don't  
intend to press him any further.

11 MR. TOBIAS: I don't intend to press  
12 him any more, thank you, sir, those are all my  
13 questions.

14 THE COMMISSIONER: Yes, all right.  
15 Now, can I just take a survey because it would be nice  
16 to get Dr. Mancer back on his ---

17 Mr. Labow, how long?

18 MR. LABOW: I still expect to be 15  
19 to 20 minutes, Mr. Commissioner.

20 THE COMMISSIONER: All right, I guess  
21 that is the end of it. I am afraid I can't do any-  
22 thing for you except to ask you to come back to-  
23 morrow, Dr. Mancer, at 10 o'clock.

24 MR. LAMEK: Just before Dr. Mancer  
25 leaves the witness box. I know that Mr. Scott is





1  
2 not here this afternoon, and when he reads today's  
3 transcript he is going to be terribly upset and going  
4 to come screaming in with re-examination tomorrow,  
5 and I have just one question of clarification.

6 THE COMMISSIONER: Yes.

7 MR. LAMEK: In response to Mr. Tobias'  
8 question, Doctor, you said that by "recent events,"  
9 as of the 25th of March, you <sup>meant</sup> read the high digoxin  
10 readings in Estrella, Pacsai and Gardner. I take  
11 it you meant Estrella, Pacsai and Miller.

12 THE WITNESS: Yes, I did.

13 MR. LAMEK: Because if you meant  
14 Gardner then Mr. Scott would be very worried tomorrow  
15 and I thought perhaps that should be cleared up.

16 THE WITNESS: That was a slip, I am  
17 sorry.

18 THE COMMISSIONER: All right, 10  
19 o'clock tomorrow morning.

20 ---Whereupon the hearing adjourned until 10:00 a.m.  
21 Thursday, September 29th, 1983.  
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